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SOL (MSHA) V. EMKO CORP.
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. WEST 87-42-M
A.C. No. 42-00149-05502 P9N

v.

Kennecott Mine

EMKO CORPORATION,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

In response to the Disapproval of Settlement and Order to Submit Information dated May 6, 1987, the parties have now submitted additional information to justify the proposed settlement of Order No. 2644520A. The penalty was originally assessed at \$300 and the proposed settlement is for \$150.

In the joint motion to approve settlements dated April 4, 1987, the parties represented that the 50% reduction in the originally assessed amount was justified because "negligence [was] less than originally assessed." Because no reasons were given to support this representation, the motion was denied and the parties were ordered to submit additional information.

The operator's attorney now advises that the operator had in effect a safety manual and a policy prohibiting the subject activity. In addition, she states that affidavits of the individuals involved indicate that despite the violation they were in fact, attempting to perform the construction in a safer manner than may otherwise have occurred.

The Solicitor represents that letter from the operator's attorney contains the factual basis for their decision to reduce the penalty.

It appears that reduction in the negligence factor is warranted under applicable Commission precedent. Southern Ohio Coal Company, 4 FMSHRC 1459 (1982). However, the operator must be aware that it has a duty not only to have a safety policy, but to enforce it through appropriate measures including supervision and training.

In light of the foregoing I approve the recommended settlement.

~1087

With respect to the three other violations involved in this case, the Solicitor has moved to vacate Order No. 2644520B and the operator has agreed to pay the original assessments of \$300 each for Order Nos. 2644520C and 2644520D. The April 4, 1987, motion to approve settlements addressed these violations in light of the six statutory criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977. I accept these recommended settlements.

Accordingly, the motion to approve settlements is GRANTED and the operator is ORDERED TO PAY \$750 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge