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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 87-197-M
A.C. No. 42-01997-05502

v.

Rattlesnake Mine

W. K. ENTERPRISE,
RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
Kent W. Winterholler, Esq., Parsons, Behle &
Latimer, Salt Lake City, Utah
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment for civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges the operator of the Rattlesnake mine, W. K. Enterprise with violating a mandatory regulatory standard 30 C.F.R. 57. 3200, because there was unsupported, loose and unconsolidated material on the left side of the mine portal. On December 10, 1986, the MSHA inspector issued a section 104(d)(1) Citation No. 2646222 at the Rattlesnake mine.

The operator filed a timely appeal contesting the existence of the alleged violation, its characterization as significant and substantial and the appropriateness of the proposed penalty.

The case was set for hearing on the merits at the same place and time as other cases involving the same parties were heard on the merits. At the hearing counsel for the Secretary moved to amend the proposed penalty so as to reduce the proposed penalty from \$800.00 to \$400.00. There was no objection. The motion was granted. Counsel for respondent then moved to withdraw its notice of contest to both the alleged S & S violation and the amount of the penalty as amended at the hearing. There was no objection; the motion was granted.

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In support of this proposed disposition of the case the parties have submitted information pertaining to the six statutory civil penalty criteria found in section 110(i) of the Act. After careful review and consideration of the pleadings, arguments, and submissions I find that the proposed disposition is reasonable, appropriate, and in the public interest.

ORDER

Citation No. 2646222 is affirmed. W. K. Enterprise, if it has not already done so, is directed to pay a civil penalty in the sum of \$400.00 within 30 days of the date of this decision.

August F. Cetti
Administrative Law Judge