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SOL (MSHA) V. KYANITE MINING
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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. VA 89-11-M
A.C. No. 44-03743-05514

v.

Docket No. VA 89-10-M
A.C. No. 44-03743-05513

KYANITE MINING CORPORATION,
RESPONDENT

East Ridge Plant

DECISION

Appearances: Jack S. Strausman, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for the Petitioner;
B. R. Coleman, Vice President, Kyanite Mining
Corporation, Dillwyn, Virginia, for the Respondent

Before: Judge Maurer

These cases are before me upon petitions for assessment of
civil penalty under Section 105(d) of the Federal Mine Safety and
Health Act of 1977, 30 U.S.C. 801, et seq., (the Act).

Pursuant to notice, a hearing was commenced in
Charlottesville, Virginia, on April 20, 1989. At that hearing,
prior to the taking of any testimony, the parties proposed a
settlement agreement. The petitioner proposed reducing the
specially assessed penalty from \$7200 to \$5000 as a more
reasonable penalty for the training violations cited. I note that
the 24 violations cited could be thought of as a single training
violation with 24 counts. MSHA cited the operator for failing to
provide new miner safety training and each of the 24 Orders named
an individual employee, and proposed a civil penalty of \$300. In
the aggregate, this amounted to a proposed civil penalty of
\$7200. I concur with the Secretary that \$5000 is a more
reasonable penalty which still satisfies the public interest. The
respondent has agreed to pay that amount in full settlement of
the cases. I have considered the matter in that light and under
the criteria for civil penalties contained in 110(i) of the Act
and I conclude that the proffered settlement is appropriate.

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Pursuant to the Rules of Practice before this Commission, this written decision confirms the bench decision I rendered at the hearing, approving the settlement.

WHEREFORE IT IS ORDERED that respondent shall pay the approved civil penalty of \$5000 within 30 days of this decision and upon such payment, this proceeding IS DISMISSED.

Roy J. Maurer
Administrative Law Judge