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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 PROCEEDING

Docket No. WEST 91-57-M
A.C. No. 26-00249-05511

v.

Gooseberry Mine

ASAMERA MINERALS (US)
INCORPORATED,
RESPONDENT

DECISION

Appearances: George B. O'Haver, Esq., Office of the Solicitor,
U.S. Department of Labor, San Francisco,
California,
for Petitioner;
Charles R. Bush, Esq., Preston, Thorgrimson,
Shidler, Gates & Ellis, Seattle, Washington,
for Respondent.

Before: Judge Cetti

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charged Respondent with violating two safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq. (the "Act").

There was a fatal fall-of-person accident at the mine. The accident occurred while the miner was replacing damaged timber dividers in the manway for the 1000-7 stope on the 1000 level. The miner fell approximately 66 feet down a manway timber slide.

Following the accident investigation, MSHA issued two 104(a) citations to the Respondent alleging a violation of 30 C.F.R. 57.15005 and 30 C.F.R. 57.11012 and proposed penalties totaling \$6,000. Respondent filed a timely answer denying any violation. After notice to the parties, the case came on for hearing before me. All issues were fully litigated. At the hearing, testimony was taken from the following individuals:

1. Robert H. Morley, Federal Mines Inspector for MSHA.
2. Ronald Barri, Federal Mine Inspector for MSHA.
3. Paul Belanger, Supervisory Mine Inspector for MSHA.
4. Richard Karlson, Mine Project Manager.

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5. Melvin J. Wattula, Health, Safety and Security Manager for Respondent.

At the conclusion of the evidentiary hearing, that matter was left open for post-hearing briefs. After the receipt of the transcript, but within the time allowed for filing of the briefs, the parties negotiated and reached a settlement agreement on both citations. Under the proposed settlement agreement, the parties propose to reduce the penalty for the citations from \$6,000 to \$3,240.

Based upon my review and evaluation of the record, including the evidence presented at the August 22, 1991 hearing, I find the settlement agreement to be reasonable and consistent with the statutory criteria in Section 110(i) of the Act. The settlement agreement is APPROVED.

ORDER

After careful consideration of all the evidence and testimony adduced in this case, IT IS ORDERED that Respondent pay to the Secretary of Labor a civil penalty of \$3,240 within thirty (30) days of the date of this decision. Upon such payment this proceeding is DISMISSED.

August F. Cetti
Administrative Law Judge