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CCASE:

SOL (MSHA) V. CONN PEST CONTROL

TTEXT:

February 26, 1993

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| SECRETARY OF LABOR, | : | CIVIL PENALTY PROCEEDING |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | Docket No. WEST 92-563 |
| Petitioner | : | A. C. No. 02-01195-03502 KCK |
| | : | |
| v. | : | Kayenta Mine |
| CONN PEST CONTROL | : | |
| INCORPORATED, | : | |
| Respondent | : | |

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

The Solicitor has filed a letter advising that the operator has paid \$150 in settlement of the penalty originally assessed at \$300. The Solicitor asks that his letter be treated as a motion to dismiss.

The subject citation indicates that it was issued for a violation of 30 C.F.R. 48.28(A) because a miner had not received the required annual refresher course. The Solicitor represents that negligence is less than first thought because there is some question whether or not the operator was in fact aware that the miner had not been trained.

The Solicitor's letter is treated as a motion for settlement and I accept the advice set forth therein. Based thereon I conclude that \$150 is an appropriate penalty under the six criteria set forth in section 110(i) of the Act. Accordingly a settlement in that amount is approved.

The Solicitor is reminded that under section 110(k) of the Act no proposed penalty that has been contested before the Commission can be compromised, mitigated or settled without the approval of the Commission. All such matters are before the Commission de novo. Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission, 736 F.2d 1147 (7th Cir. 1984). Therefore, in all cases a motion to approve settlement should be made rather than a request for dismissal.

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In light of the foregoing, it is ORDERED that the recommended settlement be APPROVED and that the operator PAY \$150 within 30 days of the date of the order.

Paul Merlin
Chief Administrative Law Judge

Distribution:

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