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SOL (MSHA) V. ASAMERA MINERAL (US)  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEST 93-105-M  
Petitioner : A. C. No. 45-02961-05557  
 :  
v. :  
 :  
ASAMERA MINERAL (US), INC., :  
Respondent : Cannon Mine

ORDER DISAPPROVING SETTLEMENT  
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for the assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlement of the one violation involved in this case. The parties seek approval of a reduction in the penalty amount from \$157 to \$20.

A review of the file shows that the citation in this case was issued for an alleged violation of 30 C.F.R. 50.10 because the operator failed to notify MSHA as soon as possible of an ignition of methane. The citation as modified was designated significant and substantial and the operator's negligence was characterized as moderate. The parties offer absolutely no reasons to support the reduction they seek. More importantly, they provide no basis for me to approve their suggested penalty under the six criteria set forth in section 110 (i) of the Act. 30 U.S.C. 820(i).

The failure to report a methane ignition may well be serious. At the very least, the parties must explain why it is not. In addition, the findings of significant and substantial and of moderate negligence are inconsistent with a \$20 penalty which I note is even less than what is now the Secretary's single penalty assessment.

The parties are reminded that the Commission and its judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act. 30 U.S.C. 820(k); See, S. Rep. No. 95-181, 95th Cong., 1st Sess. 44-45, reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 632-633 (1978). It is the Commission's responsibility to determine the appropriate amount of penalty, in accordance with the six criteria set forth in section 110(i) of the Act. *Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission*, 736 F.2d 1147 (7th Cir. 1984). A settlement

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motion, such as the one filed in this case, is insufficient to allow the Commission to discharge its responsibilities under the Act, particularly where the suggested penalty amount is so very low.

In light of the foregoing, it is ORDERED that the motion for approval of settlement be DENIED.

It is further ORDERED that within 30 days of the date of this order the parties submit additional information to support their motion for settlement. Otherwise this case will be assigned and set for hearing.

Paul Merlin  
Chief Administrative Law Judge

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