

CCASE:
MSHA V. ASAMERA MINERAL
DDATE:
19930810
TTEXT:

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 92-802-M
Petitioner	:	A. C. No. 45-02961-05553
	:	
v.	:	Cannon Mine
	:	
ASAMERA MINERAL (US), INC.,	:	
Respondent	:	

ORDER ACCEPTING RESPONSE
 DECISION APPROVING SETTLEMENT
 ORDER TO PAY

Before: Judge Merlin

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. On April 26, 1993, the parties filed a motion to approve settlement of the one violation involved in this case. The parties sought approval of a reduction in the penalty amount from the original assessment of \$100 to \$50. On June 11, 1993, an Order Disapproving Settlement and Order to Submit Information was issued directing the parties to file additional information to support their motion. On July 12, 1993, the Solicitor submitted a letter to the undersigned accompanied by a detailed and comprehensive letter dated June 24, 1993 from the operator. Both letters further explain the circumstances of the cited violation.

The Solicitor points out that, as noted in the Disapproval of Settlement, the inspector's initial finding of high negligence was changed to ordinary negligence by the narrative findings of the Special Assessment. Information contained in the operator's letter justifies a finding of ordinary negligence. Thus, with respect to the alteration of the accident scene the operator advises that it contacted MSHA prior to altering the site and was given approval to move the piece of equipment in question from the accident scene. The operator's manager made a contemporaneous notation of this approval in his diary, a copy of which notation was attached to the letter to the Solicitor. In addition, the operator's assertion that there was only minimal change to the accident site, is uncontradicted. The Solicitor represents that the operator's contemplated testimony will undermine the credibility of the investigative report and that under the circumstances the recommended reduction in penalty amount is appropriate. In view of the explanations now in the record, I agree that negligence and gravity are less than originally

~1608

thought. Therefore, I accept the parties' representations and I conclude that the settlement is appropriate under the six criteria set forth in section 110(i) of the Act.

In light of the foregoing, it is ORDERED that the information filed July 12 is ACCEPTED as a response to the June 11 order.

It is further ORDERED that the recommended settlement be APPROVED and the operator PAY \$50 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge

Distribution:

Douglas White, Esq., Counsel, Trial Litigation, Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 (Certified Mail)

Robert A. Friel, Esq., Office of the Solicitor, U. S. Department of Labor, 1111 Third Avenue, Suite 945, Seattle, WA 98101-3212 (Certified Mail)

Mr. Melvin J. Wattula, Manager, Asamera Minerals (US), Inc., P.O. Box 398, Wenatchee, WA 98801 (Certified Mail)

/gl