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SOL (MSHA) V. KIEWIT WESTERN COMPANY
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

SECRETARY OF LABOR : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. WEST 94-213-M
Petitioner : A. C. No. 05-04245-05506
:
v. :
:
KIEWIT WESTERN COMPANY, :
Respondent : Universal Portable Crusher

DECISION DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977.

The Solicitor has filed a motion to approve settlement for the two violations in this case. A reduction in the penalties from \$4,267 to \$1,267 is proposed. The Solicitor proposes to reduce the penalty for one of the violations, Citation No. 4335289, from \$4,000 to \$1000. With respect to the remaining violation, the operator has agreed to pay the proposed penalty in full.

Citation No. 4335289 was issued for a violation of 30 C.F.R. 56.12016 because the control circuit was not locked out while maintenance work was performed. The violation contributed to a moving machinery accident, which caused injuries to an employee's arm. The basis given for the reduction is that negligence was less than originally thought. According to the Solicitor, the operator had implemented safe operating procedures which had in fact been utilized prior to the accident. The Solicitor states that the accident can be attributed to a "communication mix up". However, the Solicitor does not explain what this "communication mix up" was, who was involved, and why it is not attributable to the operator.

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The Solicitor is 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 judge's responsibility to determine the appropriate amount of penalty, in accordance with the six criteria set forth in section 110(i) of the Act. 30 U.S.C. 820(i); Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission, 736 F.2d 1147 (7th Cir. 1984).

Based upon the Solicitor's motion, I cannot properly discharge my statutory responsibilities because I have not been given sufficient information upon which to conclude that the recommended penalty of \$1,000 for Citation No. 4335289 is appropriate under the six criteria of section 110(i).

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 Solicitor submit additional information to support his motion for settlement. Otherwise, this case will be set for further proceedings.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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