

CCASE:
SOL (MSHA) V. KIEWIT
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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

ORDER ACCEPTING RESPONSE
DECISION APPROVING SETTLEMENT
ORDER TO PAY

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.

On May 17, 1994, the Solicitor filed a motion to approve settlement for the two violations in this case. The Solicitor sought approval of a reduction in the penalties from \$4,267 to \$1,267. The Solicitor proposed to reduce the penalty for one of the violations, Citation No. 4335289, from \$4,000 to \$1,000. With respect to the remaining violation, the operator has agreed to pay the proposed penalty in full. On June 15, 1994, an order was issued disapproving the settlement and directing the Solicitor to file additional information to support his motion. On July 25, 1994, the Solicitor filed an amended motion to approve settlement.

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 for the reduction remains that negligence was less than originally thought. The Solicitor now has explained the circumstances surrounding the accident, and his statement that the accident was attributed to a "communication mix up". According to the Solicitor, the belt had been shut down and was locked-out properly in order to clear material from the under-conveyor belt. The conveyor belt inspection plate was removed and the material was shoveled from the belt. The belt was then restarted in accordance with proper procedures. However, the

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miner in the control room unilaterally stopped the belt so that material could clear the crusher's rotovator. At this time, another miner decided that the conveyor belt inspection plate could be safely installed and began to do so which resulted in the injury.

I accept the Solicitor's representations and I conclude that the settlements are appropriate under the six criteria set forth in section 110(i) of the Act.

In light of the foregoing, it is ORDERED that the settlement motion filed July 25 is ACCEPTED as a response to the June 15 order.

It is further ORDERED that the recommended settlement be APPROVED and the operator PAY \$1,267 within 40 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge

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