

CCASE:
SOL (MSHA) V. COLUMBIA QUARRY
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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. LAKE 94-155-M
Petitioner	:	A. C. No. 11-00039-05516
	:	
v.	:	
	:	Columbia Quarry & Mill #9
COLUMBIA QUARRY COMPANY,	:	
	:	
Respondent	:	

DECISION DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

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.

The Solicitor has filed a motion to approve settlement for the one violation in this case. A reduction in the penalty from \$400 to \$250 is proposed.

Citation No. 4307486 was issued for a violation of 30 C.F.R. 50.10 because an accident occurred at the plant and was not immediately reported to MSHA. The violation was designated as non-significant and substantial but negligence was characterized as high. In her motion the Solicitor advises that gravity and negligence remain the same. She states that the sole basis for the proposed reduction is for the purpose of settlement since the parties do not want to pursue further litigation of this matter. The Solicitor make no reference to the six criteria in section 110(i) of the Act.

I am unable to approve this settlement. 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 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). A proposed reduction must be based upon a consideration of these criteria.

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Based upon the Solicitor's representation, I cannot properly discharge my statutory responsibilities because I have not been given sufficient basis upon which to conclude that the recommended penalty of \$250 for Citation No. 4307486 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 her 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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