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SOL (MSHA) V. CHANDLER'S SAND
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

SECRETARY OF LABOR : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. WEST 94-478-M
Petitioner : A. C. No. 04-04157-05534
:
v. : Corona Plant
CHANDLER'S PALOS VERDES SAND :
& GRAVEL COMPANY, :
Respondent :

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 settlements for the two violations in this case. A reduction in the penalties from \$7,000 to \$5,250 is proposed. The two violations in this case contributed to an accident which caused an injury to a miner.

Citation No. 3932600 was issued for a violation of 30 C.F.R. 56.16002(b) because a work platform was not provided for the top of the two washed concrete sand storage silos. The originally assessed penalty was \$2,000 and the proposed settlement is \$1,500. Citation No. 3934261 was issued for a violation of 30 C.F.R. 56.16002(c) because a plant repairman entered a washed concrete sand bunker without wearing a safety belt and lifeline. The originally assessed penalty was \$5,000 and the proposed settlement is \$3,750.

In his motion for settlement approval the Solicitor gives no reasons to support the proposed reductions in the penalties. The violations in this case were serious and contributed to an accident resulting in an injury. The Solicitor must provide a basis for me to approve such a settlement, especially because an injury occurred. The fact that the suggested penalties remain substantial does not in and of itself, warrant approval.

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

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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 have no grounds upon which to conclude that the recommended penalties of \$5,250 are appropriate under the 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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