

CCASE:
SOL (MSHA) V. CYPRUS EMERALD
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SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 94-587
Petitioner	:	A. C. No. 36-05466-04022
	:	
v.	:	
	:	Emerald Mine No. 1
CYPRUS EMERALD RESOURCES	:	
CORPORATION,	:	
Respondent	:	

ORDER ACCEPTING APPEARANCE
DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Merlin

This case is before me upon a petition for assessment of a civil penalty filed on October 11, 1994, under section 105(d) of the Federal Mine Safety and Health Act of 1977.

The penalty petition was filed on behalf of the Secretary by a "Conference and Litigation Representative", hereafter referred to as a CLR. In the cover letter to the petition the CLR advises that he is an employee of the Mine Safety and Health Administration who has been trained and designated as a CLR and is authorized to represent the Secretary in accordance with an attached Limited Notice of Appearance. In the appearance notice the CLR states that he is authorized to represent the Secretary in all prehearing matters and that he may appear at a hearing if an attorney from the Solicitor's office is also present.

Subparagraph (4) of section 2700.3(b) of the Commission's regulations, 29 C.F.R. 2700.3(b)(4), provides that an individual who is not authorized to practice before the Commission as an attorney may practice before the Commission as a representative of a party with the permission of the presiding judge. In reviewing this matter, I take judicial notice of the fact that more than 5,000 new cases were filed with the Commission in FY 1994. Obviously, a caseload of this magnitude imposes strains upon the Secretary's resources as well as those of this Commission. It appears to me that the Secretary is attempting to allocate his resources in a responsible matter. Therefore, I exercise the discretion given me by the regulations, cited above, and determine that in this case the CLR may represent the Secretary in accordance with the notice he has filed.

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On November 17, 1994, the CLR filed a motion to approve settlement for the one violation in this case. The originally assessed amount was \$252 and the proposed settlement is also \$252. However, the CLR requests that the citation be modified to delete the significant and substantial designation. The violation was issued because a continuous miner operator stood inside the chain conveyor on a continuous mining machine while he was cleaning and servicing the machine. The electrical power to the trailing cable for the machine had not been removed and the plug was not tagged out of service. According to the CLR, the circuit breaker on the mining machine had been placed in the "off" position. In order for the conveyor chain to move, both the circuit breaker and the conveyor switch on the machine would have to be activated. The individual responsible for operating the machine was the one standing inside the conveyor chain. The CLR represents therefore, that it was unlikely the machine would be energized while the miner operator was servicing it. I accept the representations of the CLR and based thereon approve the deletion of the S&S designation. The violation nevertheless, remains serious and warrants the agreed upon penalty assessment which is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, it is ORDERED that the motion for approval of settlement be GRANTED.

It is further ORDERED that Citation No. 3671905 be MODIFIED to delete the significant and substantial designation.

It is further ORDERED that the operator PAY a penalty of \$252 within 30 days of this decision.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

Gerald F. Moody, Jr., Conference and Litigation Representative,
U. S. Department of Labor, MSHA, 200 James Place, Monroeville, PA
15146

Michael R. Peelish, Esq., Cyprus Emerald Resources Corp., 9100
East Mineral Circle, Englewood, CO 80112

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