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SOL (MSHA) V. HOMER CITY COAL PROCESSING  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. PENN 94-591  
Petitioner : A. C. No. 36-06475-03542  
:  
v. : Homer City Coal  
HOMER CITY COAL PROCESSING : Processing Plant  
CORPORATION, :  
Respondent :

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

Before: Judge Merlin

The penalty petition in the above-captioned case 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 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, note is taken of the fact that more than 5,000 new cases were filed with the Commission in Fiscal 1994. Obviously, a caseload of this magnitude imposes strains upon the Secretary's resources as well as those of this Commission. It appears 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.

The CLR has filed a motion to approve settlement for the one violation in this case. A reduction in the penalty from \$94 to \$63 is proposed. The CLR also requests that the citation be modified to reduce negligence from moderate to low. The violation in this case was issued because fine coal and float

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coal dust accumulated below the No. 7 conveyor in the preparation plant. According to the CLR, the operator was aware of the accumulation problem in this area and was prepared to fix it during the first belt conveyor shutdown. In the interim, the operator increased the number of times the area was to be cleaned from one to three times a shift. The CLR further advises that the area had been cleaned three hours before the issuance of the citation and an hour prior to the citation the area was examined and reported to be in good condition.

I have reviewed the documentation and representations made in this case, and conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED.

It is ORDERED that Citation No. 3960774 be MODIFIED to reduce negligence from moderate to low.

It is further ORDERED that the operator PAY a penalty of \$63 within 30 days of this decision.

Paul Merlin  
Chief Administrative Law Judge

Distribution:

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