

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W. 6TH FLOOR
WASHINGTON D.C. 20006-3868

April 29, 1999

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 99-77
Petitioner	:	A. C. No. 36-00930-03603
	:	
v.	:	
RAYNE ENERGY INCORPORATED,	:	Rayne No. 1
Respondent	:	

DECISION DISAPPROVING SETTLEMENT
ORDER TO RESUBMIT SETTLEMENT MOTION

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 March 15, 1999, I issued a prehearing order directing the parties to discuss settlement. On April 12, 1999, a settlement motion was filed by the Secretary.

I cannot approve this motion. The motion was signed and filed by an individual who describes herself as a paralegal. Although the motion contains the names of three Solicitors in ascending degrees of responsibility, none of them has signed the motion. Commission Rule 2700.3, 29 C.F.R. § 2700.3, sets forth the individuals and categories of individuals who are permitted to practice before the Commission. Under subparagraph (a) attorneys are permitted to practice and under subparagraph (b) a non attorney may practice if he is a party, a representative of miners or certain designated individuals associated with specified entities. The individual who signed and filed the settlement motion in this case is not an attorney and is not one of the described non attorneys allowed to appear before the Commission. Subparagraph (c) permits any other person to practice with the approval of the presiding judge or the Commission. My approval has not been sought for the appearance of the individual in question. I know nothing of the qualifications and training of this person. The settlement motion filed in this case must be signed by an attorney in the Office of the Solicitor or it will not be approved.

This purported filing from the Philadelphia Office of the Solicitor is in contrast to procedures previously followed by the national Office of the Solicitor in seeking permission for non attorneys to appear before the Commission. In 1994, when the Office of the Solicitor wished to have Conference and Litigation Representatives (CLR) appear on behalf of the Secretary in mine safety cases, information was furnished regarding the training and credentials of these individuals. Cyprus Emerald Resources Corp., 16 FMSHRC 2359 (November 1994). Thereafter, in every case where a CLR wishes to represent the Secretary, he has filed a motion for permission to appear. The Regional Solicitor is well aware of the procedures followed with respect to CLR's.

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 settlement motion be resubmitted and signed by an attorney in the Office of the Solicitor.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

Tom Mascolino, Esq., Office of the Solicitor, U. S. Department of Labor, Room 420, 4015
Wilson Boulevard, Arlington, VA 22203

B. Anne Gwynn, Esq., Office of the Solicitor, U. S. Department of Labor, 3535 Market Street,
Gateway Building, Room 14480, Philadelphia, PA 19104

Joseph A. Yuhas, Esq., Rayne Energy Inc., P. O. Box 25, Barnesboro, PA 15714

/gl

FEDERAL MINE SAFETY AND
HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006-3868

Tom Mascolino, Esq.
Office of the Solicitor
U. S. Department of Labor
Room 420
4015 Wilson Boulevard,
Arlington, VA 22203

FEDERAL MINE SAFETY AND
HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006-3868

B. Anne Gwynn, Esq.
Office of the Solicitor
U. S. Department of Labor
3535 Market Street, Gateway Building
Room 14480
Philadelphia, PA 19104

FEDERAL MINE SAFETY AND
HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006-3868

Joseph A. Yuhas, Esq.
Rayne Energy Inc.
P. O. Box 25
Barnesboro, PA 15714