

CCASE:
SOL (MSHA) V. ENERGY WEST MINING
DDATE:
19940103
TTEXT:

January 3, 1994

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| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | |
| Petitioner | : | |
| | : | |
| v. | : | Docket No. WEST 91-251 |
| | : | |
| ENERGY WEST MINING COMPANY, | : | |
| Respondent | : | |
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DIRECTION FOR REVIEW AND ORDER APPROVING PENALTY

The joint petition for discretionary review filed by the Secretary of Labor and Energy West Mining Company ("Energy West") is granted.

This case had been remanded to the administrative law judge for reanalysis of whether Energy West's violation was significant and substantial ("S&S") according to the criteria set forth in Mathies Coal Co., 6 FMSHRC 1 (January 1984). The judge determined that the violation was not S&S but he failed to reassess the civil penalty. In their petition, the parties request that the Commission assess a penalty and have stipulated that \$100 would be an appropriate penalty according to the six criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(i)(1988).

In the circumstances of this case and in the interest of judicial economy, it is appropriate for the Commission to assess the penalty. See, e.g., Birchfield Mining Co., 11 FMSHRC 1428, 1429-30 (August 1989); Southern Ohio Coal Co., 4 FMSHRC 1459, 1465 (August 1982). Accordingly, upon review of the record and consideration of the six criteria, we approve the stipulated penalty of \$100.

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Energy West is ordered to pay a civil penalty of \$100 to the Secretary of Labor within 30 days of the date of this decision. Upon receipt of payment, this proceeding is dismissed.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner