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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceeding

Docket No. DENV 79-79-P
A/O No. 02-00533-02014

v.

Black Mesa Strip Mine

PEABODY COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

AND

ORDERING PAYMENT OF CIVIL PENALTIES

Appearances: David F. Barbour, Esq., Office of the Solicitor,
Department of Labor, for Petitioner;
Thomas F. Linn, Esq., Peabody Coal Company, St. Louis,
Missouri, for Respondent.

Before: Judge Cook

The Mine Safety and Health Administration (MSHA) filed a petition for assessment of civil penalty pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (Act) in the above-captioned proceeding. An answer was filed and a notice of hearing was issued. Subsequent thereto, MSHA filed a motion requesting approval of a settlement and for dismissal of the proceeding.

Pursuant to an order of the Administrative Law Judge, information as to the six statutory criteria contained in section 110 of the Act was submitted. This information has provided a full disclosure of the nature of the settlement and the basis for the original determination. Thus, the parties have complied with the intent of the law that settlement be a matter of public record.

In its motion, MSHA stated, in part, as follows:

Section 104(b) Notice No. 1 CET (8-0002), 1/17/78, 30
CFR 71.100 originally assessed at \$98.00 to be settled
for \$90.00

The Violation

Based upon the results of five respirable dust samples submitted by Peabody Coal Company (Peabody), the inspector found that the average concentration of respirable dust for a surface work position exceeded the applicable limit by 2.3 milligrams.

Gravity and Negligence

The violation was serious in that excessive concentration of respirable dust could lead to the contraction of pneumoconiosis. Peabody is under a statutory duty to maintain the concentration of respirable dust within the prescribed limits. Its failure to do so is prima facie evidence of a lack of compliance with that duty and accordingly of it ordinary negligence.

Good Faith

Peabody was given until February 16, 1978, to abate the violation. It submitted its samples (which were in compliance) by February 5, 1978. In so doing it exhibited more than ordinary good faith in attempting to achieve rapid compliance.

Size

Peabody Coal Company has a yearly production of approximately 61,707,236 tons per year. (See Exhibit A). The Black Mesa Strip Mine produces approximately 3,900,364 tons per year and employs approximately 299 miners (see Exhibits A and B). Peabody is large in size, as is the Black Mesa Strip Mine.

Previous History

In the 24 months prior to February 14, 1978, 30 assessable violations were cited in the Black Mesa Strip Mine during 28 inspection days (see Exhibit A). Given the size of the mine this represents a small history of previous violations.

Settlement Amount

MSHA believes the proposed settlement, although modest for an operator of Peabody's size, accurately reflects the criteria set forth in the Coal Mine Health and Safety Act of 1969 and in its successor, the Federal Mine Safety and Health Act of 1977, particularly in light of Peabody's rapid compliance and favorable past history of violations.

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In view of the reasons given above by counsel for MSHA for the proposed settlement, and in view of the disclosure as to the elements constituting the foundation for the statutory criteria, it appears that a disposition approving the settlement will adequately protect the public interest.

ORDER

Accordingly, IT IS ORDERED that the proposed settlement, as outlined above, be, and hereby is, APPROVED.

IT IS FURTHER ORDERED that Respondent, within 30 days of the date of this decision, pay the agreed-upon penalty of \$90 assessed in this proceeding.

John F. Cook
Administrative Law Judge