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SOL (MSHA) V. BOYLE AIRE COAL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. BARB 79-76-P  
Assessment Control  
No. 15-06809-03001

v.

No. 1 Tipple

BOYLE AIRE COAL COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Appearances: Eddie Jenkins, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner  
Elvin Smith, Corbin, Kentucky, for Respondent

Before: Administrative Law Judge Steffey

When the hearing was convened on June 27, 1979, in the above-entitled proceeding, counsel for MSHA and respondent's representative asked that I approve a settlement agreement reached by the parties. Under the settlement agreement, respondent would pay the full amount of the penalties proposed by the Assessment Office.

MSHA's Petition for Assessment of Civil Penalty seeks assessment of civil penalties for alleged violations of 30 CFR 77.1607(cc) and 30 CFR 77.1713(c). The Assessment Office proposed that a penalty of \$84 be assessed for the alleged violation of section 77.1607(cc) and that a penalty of \$60 be assessed for the alleged violation of section 77.1713(c). The data in the official file show that respondent processes only about 100 tons of coal per day and is, therefore, a small operator. In the absence of any evidence to the contrary, I find that payment of penalties will not cause respondent to discontinue in business. The record contains no evidence to show that respondent has a history of previous violations. Respondent made a good faith effort to achieve rapid compliance.

Section 77.1607(cc) requires that unguarded conveyors with walkways be equipped with stop devices or cords along their full length. Citation No. 126422 alleged that respondent's conveyor was not equipped with the required stop devices. Respondent's answer to the Petition for Assessment of Civil Penalty states that only one person walks along the conveyor and that he does so only to grease the belt rollers and head drive at 10-day intervals of operation. Such greasing can be done only when the belt is motionless and the key to the power center is kept by the tipple operator. Moreover, respondent's answer states that the tipple operator's seat is located in a position which makes it impossible for anyone to walk past him so as to pass along the walkway beside the conveyor belt. If a hearing had been

held, it is likely that respondent's evidence would have shown that there was a low degree of gravity and

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negligence associated with the alleged violation of section 77.1607(cc). Therefore, respondent's agreement to pay the penalty of \$84 proposed by the Assessment Office should be approved.

Section 77.1713(c) requires that an entry be made in an approved book of the results of the daily inspection of surface facilities. Citation No. 126423 alleges that the daily record book was not being kept up to date. Respondent's answer to MSHA's Petition claims that respondent was making the entries in an approved book, but was making the entries at the end of the shift instead of at the beginning of the shift as required by the inspector. If a hearing had been held, it is likely that respondent's evidence would have shown that the violation was nonserious and that it involved a low degree of negligence, if any. Therefore, respondent's agreement to pay the penalty of \$60 proposed by the Assessment Office for the alleged violation of section 77.1713(c) should be approved.

WHEREFORE, it is ordered:

(A) The parties' request for approval of the settlement agreement is granted and the settlement is approved.

(B) In accordance with the settlement agreement, respondent is ordered to pay, within 30 days from the date of this decision, a civil penalty of \$84 for the violation of section 77.1607(cc) alleged in Citation No. 126422 dated April 7, 1978, and a penalty of \$60 for the violation of section 77.1713(c) alleged in Citation No. 126423 dated April 7, 1978. Although it was not stated on the record at the hearing, it appears that respondent may already have submitted a check to the Assessment Office in payment of the penalties which are ordered to be paid in this paragraph. If respondent has already submitted a check for payment of the penalties involved in this proceeding, respondent may, of course, ignore this order to pay.

Richard C. Steffey  
Administrative Law Judge