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SOL (MSHA) V. SOUTHERN OHIO 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. VINC 79-140-P
A.O. No. 33-02308-03008

v.

Raccoon No. 3 Mine

SOUTHERN OHIO COAL COMPANY,
RESPONDENT

DECISION

Appearances: Linda Leasure, Attorney, Office of the Solicitor,
U.S. Department of Labor, Cleveland, Ohio, for the
Petitioner David M. Cohen, Esquire, Lancaster, Ohio,
for the Respondent

Before: Judge Koutras

Statement of the Case

This proceeding is one of twelve docketed cases scheduled for hearings on the merits at Columbus, Ohio, June 19, 1979. A petition for assessment of civil penalty was filed in this case by the petitioner pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a) on January 18, 1979, seeking civil penalty assessments for two alleged violations of the Act and implementing mine safety and health standards. Respondent filed timely answers contesting the citations, and pursuant to notice, the parties appeared at the time and place for the hearing. During a prehearing conference on the record, the parties informed me that they had reached a tentative settlement with respect to this docket. They requested an opportunity to be heard with respect to the proposed settlement and that I approve same pursuant to Commission Rule 29 CFR 2700.27(d).

The parties were afforded an opportunity to present arguments in support of the proposed settlement. The citations, initial assessments, and the proposed settlement amounts are as follows:

Citation No.	Date	30 CFR Section	Assessment	Settlement
279804	7/11/78	75.301-1	\$560	\$325
279807	7/12/78	75.301	\$530	\$305

Discussion

In support of the proposed settlement for these violations, the petitioner pointed out that the conditions cited were similar violations

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related to ventilation, and that one deals with a possible explosion or fire hazard, and the other involves possible exposure to respirable dust. The proposed reduction of the initial penalty takes into account the fact that while more than one employee would be exposed to the fire hazard, only one would be exposed to the dust hazard. The emphasis placed on the number of employees exposed to the hazards by the assessment office was exaggerated. Further, after consulting with the inspector, who was present in the courtroom, petitioner asserted that he believed the conditions cited resulted from a problem with adjusting and repairing the line curtains and that they were isolated events. Further, the prior history for prior violations of the same standards show very few for the year 1978 (Tr. 45-49).

In addition to the evidence and arguments presented as to the specific circumstances surrounding the citations, petitioner presented information concerning the size and scope of respondent's mining operations at the Raccoon No. 3 Mine and evidence concerning the prior history of violations at that mine (Tr. 35, Exhibit P-1).

ORDER

After due consideration of this matter, I find that the proposed settlement should be approved. Accordingly, pursuant to 29 CFR 2700.27(d), respondent is ordered to pay civil penalties totaling \$630.00 in satisfaction of the cited violations within thirty days of the date of this decision. Upon receipt of payment, this matter is dismissed.

George A. Koutras
Administrative Law Judge