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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. PENN 79-11
A/O No. 36-00966-03017

v.

Montour No. 4 Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING WITHDRAWAL

On July 16, 1979, the Solicitor filed a motion to approve a settlement of \$60 for the only citation in this petition. The citation, which was issued for failure to wear face shields or goggles, was originally assessed at \$140. In his motion, the Solicitor advised he would likely be unable to prove a violation since the operator has an enforced eye protection program. He then cited North American Coal Corporation, 3 IBMA 93.

On August 6, 1979, I disapproved the proposed settlement. Based upon the Solicitor's representations, I concluded a violation did not appear to exist and that the petition should be withdrawn. The parties were then ordered to submit additional statements on or before August 20, 1979.

The Solicitor has now filed a motion to withdraw the petition for assessment of a civil penalty. In his motion, the Solicitor advises the following:

A review of the evidence has revealed that Respondent has an enforced eye protection program at the mine which is aimed at insuring that its miners wear eye protection at all times as required by the Act. According to North American Coal Corporation, 3 IBMA 93, at 107, no violation of 30 CFR 75.1720(a) exists where an operator has established a safety system designed to assure that employees wear safety goggles on appropriate occasions and enforces the system with due diligence. If the failure to wear glasses is entirely the result of his or her own disobedience or negligence rather than the operator's failure to require that the glasses be worn, no violation has occurred.

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The Solicitor's representations are well taken. Accordingly, the Solicitor's motion to withdraw the petition for assessment of a civil penalty is hereby APPROVED.

Paul Merlin
Assistant Chief Administrative Law Judge