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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 79-10
A/O No. 36-03298-03006

v.

Laurel Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

ORDER TO PAY

The Solicitor has filed motions to approve a settlement in the above-captioned proceeding.

The only violation in this petition was issued for failure to maintain average concentrations of respirable dust at or below 2 milligrams of respirable dust per cubic meter of air. This violation of 30 CFR 71.100 was originally assessed at \$325. The Solicitor initially filed a motion recommending a settlement of \$195. In a telephone conversation with counsel, I indicated the recommended settlement would not be acceptable. The Solicitor now has filed an amended motion recommending a settlement of \$225. The reasons for this reduction were set out in the initial motion to approve settlement. In the initial motion, the Solicitor advised the following:

A reduction from the original assessment is warranted under the circumstances of this case. The citation involves a violation of 30 CFR 71.100 for the operator's failure to provide respirable dust samples within the permissible limits. Thereafter, a 104(b) order was issued for the operator's failure to abate the citation within a reasonable amount of time. Further investigation into the factors underlying issuance of the citation and order disclosed that the operator's negligence was less than originally calculated in the proposed assessment. In addition, the operator demonstrated more good faith than originally allocated. Although it is true that the operator did not reduce the respirable dust in the atmosphere to permissible limits within the time specified in the original citation, the operator had taken steps to attempt to abate the condition. In particular, the operator had attempted to change the heating system and

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had ordered new electric heaters in order to alleviate the problem. After the 104(b) order was issued, it was found that the heaters were not the source of the respirable dust problem but rather, the ventilation needed to be altered.

I accept the Solicitor's representations. Accordingly, I conclude the recommended settlement is consistent with and will effectuate the purposes of the Act. The recommended settlement is therefore, approved.

ORDER

The operator is ORDERED to pay \$225 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge