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SOL (MSHA) V. DUNLAP COAL CO.  
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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. BARB 78-675-P  
Assessment Control  
No. 40-02190-02004

v.

DUNLAP COAL COMPANY,  
RESPONDENT

No. 1 Surface Mine

DECISION APPROVING SETTLEMENT

Appearances: Leo J. McGinn, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner  
No one appeared at the hearing on behalf of Respondent

Before : Administrative Law Judge Steffey

When the hearing was convened on August 22, 1979, in the above-entitled proceeding, counsel for the Mine Safety and Health Administration requested that I approve a settlement agreement which had been entered into by the parties. Under the settlement agreement, respondent would pay a civil penalty of \$9.00 for an alleged violation of 30 CFR 71.101 instead of the penalty of \$46.00 proposed by the Assessment Office.

Counsel for MSHA stated that he had agreed to the reduction in the proposed penalty because the alleged violation of Section 71.101 was cited prior to the amendments contained in the Federal Mine Safety and Health Act of 1977 which removed the cloud cast upon alleged violations of the respirable-dust standards by the opinions of the former Board of Mine Operations Appeals in Eastern Associated Coal Corp., 7 IBMA 14 (1976), aff'd on reconsideration, Eastern Associated Coal Corp., 7 IBMA 133 (1976). Large numbers of cases which arose during the period when the Board's Eastern Associated opinions were in effect were subsequently settled on a basis which amounted to an average payment by the coal operators of \$9.00 per alleged respirable-dust violation. See, e.g., Judge Joseph B. Kennedy's Order Approving Consent Settlement and To Pay Civil Penalties issued May 10, 1978, in Secretary of Labor (MSHA) v. Consolidation Coal Company, et al., Docket Nos. VINC 76-76, et al. I believe that fairness to other operators justifies allowance of the settlement figure of \$9.00 for all civil-penalty cases involving alleged respirable-dust violations occurring prior to the amendment of the definition of "respirable dust" in the 1977 Act.

In addition to the equitable reasons given above for accepting a settlement of \$9.00, the official file shows that respondent operated an extremely small business employing only two miners who produced an average of approximately 22 tons of coal per day (Tr. 4). Moreover, respondent's answer to MSHA's Petition for Assessment of Civil Penalty shows that respondent had taken the required dust samples, but the samples had been returned to respondent because of respondent's lack of understanding about the color of card which should have been used at the time the samples were mailed to MSHA's Pittsburgh laboratory. At the present time, respondent is not engaged in producing coal (Tr. 4).

Since a very small operator is involved and since there was a good faith effort to comply with the respirable-dust standards, I find that strong reasons exist to approve the settlement agreement in this instance.

WHEREFORE, it is ordered:

(A) The settlement agreement submitted at the hearing by counsel for MSHA is approved.

(B) Pursuant to the settlement agreement, Dunlap Coal Company shall, within 30 days from the date of this decision, pay a civil penalty of \$9.00 for the violation of 30 CFR 71.101 alleged in MSHA's Petition for Assessment of Civil Penalty filed in Docket No. BARB 78-675-P.

Richard C. Steffey  
Administrative Law Judge