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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), v. ALLIED CHEMICAL CORPORATION, RESPONDENT	PETITIONER	Civil Penalty Proceeding Docket No. LAKE 79-234-M A.C. No. 11-01764-05007 Spivey Mine
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ORDER APPROVING SETTLEMENT AND
DIRECTING PAYMENT

On October 9, 1979, Petitioner filed a motion to approve a settlement agreement and to dismiss the proceeding. In support of its motion, Petitioner states that the amount of the settlement is \$226 for alleged violations and the amount of the original assessment was \$452. The motion contained an analysis of the criteria to be followed in determining the appropriateness of the penalty, and submitted documentation in support of the motion.

The settlement agreement should be approved for the following reasons:

1. Citation No. 366017 - there were no miners working in the expected rock fall area. Miners attempted to remove the rocks but were unsuccessful. The Operator exhibited good faith by drilling down the rock and bolting the area to abate the condition.
2. Citation No. 366019 - a guard was placed across the end of the pumps to abate. There were no moving parts and employees did not travel between or in front of the pumps.
3. Citation No. 366020 - Operator placed warning devices on the bin chutes although the operator stated that the chutes were plainly visible and it thought that they posed no danger to the miners.
4. Citation No. 366022 - a loose slab was removed from the roof by the Operator. The slab was not located in a working area of the mine and was not readily visible to the Operator.

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5. Citation No. 366024 - waterlines were raised 4" to abate the citation. The lines in question had been in place for 4 years prior to citation. Those riding the motor had adequate clearance under the lines both before and after the citation was abated. No specific height was required by the governing standard.
6. Citation No. 366025 - Rocks from area which had been blasted broke ladder rungs. Operator had planned to repair the ladders prior to commencing any additional work. To abate, the Operator installed a new ladder and ladder rungs.
7. Citation No. 366026 - Operator removed slab which contained visible fracture. Area in which slab was located had not been worked in some time. Operator assigned extra men to abate the citation.
8. Citation No. 366027 - Operator provided safety belts and life check lines to abate citation. Although small, openings of 8" X 12" and 19" X 12" posed possibility that someone might fall through them.

Having analyzed the following factors; (a) the operator's history of previous violations; (b) the appropriateness of the penalty to the size of the business; (c) the degree of negligence; (d) the effect on the operator's ability to continue in business; (e) the gravity of the violation, and (f) the good faith in achievement of rapid compliance after notification of violation, I conclude that the settlement agreement should be approved.

Therefore, it is ORDERED that the proposed settlement agreement is APPROVED.

It is FURTHER ORDERED that Respondent pay the agreed amount within 30 days of this order.

James A. Broderick
Chief Administrative Law Judge