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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 78-674-P  
Assessment Control  
No. 15-07212-02008

v.

No. 10 Mine

DEBY COAL COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Appearances: Stephen P. Kramer, 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 in the above-entitled proceeding was convened in Barbourville, Kentucky, on September 12, 1979, counsel for petitioner asked that I approve a settlement agreement under which respondent had already paid the full civil penalties totaling \$590 which had been proposed by the Assessment Office. The penalties proposed by the Assessment Office were derived by a proper consideration of the six criteria set forth in Section 110(i) of the Federal Mine Safety and Health Act of 1977.

Respondent's No. 10 Mine produces approximately 31,250 tons of coal on an annual basis or about 125 tons of coal per day. Therefore, I agree that the Assessment Office appropriately found that respondent operates a small business and that any penalties which might be assessed in this proceeding should be in a low range of magnitude under the criterion of the size of respondent's business. There is no evidence in the record to show that payment of penalties would cause respondent to discontinue in business. In the absence of any evidence to the contrary, I find that payment of civil penalties will not cause respondent to discontinue in business.

All of the alleged violations involved in this proceeding were corrected within the period of time allowed by the inspector and therefore the Assessment Office correctly found that respondent demonstrated a normal good faith effort to achieve rapid compliance. The Assessment Office allowed from 10 to 12 penalty points for respondent's history of previous violations which also appears to be reasonable.

The penalties proposed by the Assessment Office are based on the Assessment Office's findings that all of the alleged violations were the result of ordinary negligence with penalty points fixed midway in the

allowance for ordinary negligence. The alleged violations were all considered to be associated with a moderate degree of gravity with the exception of two alleged violations of Section 75.202.

The Assessment Office arrived at penalties of \$58 each for six alleged violations. The first \$58 penalty was proposed for a violation of Section 75.1100-2(i)(2) alleging that respondent did not have 5 tons of rock dust which could be delivered to the mine within a period of 1 hour. The second \$58 penalty was proposed for a violation of Section 75.202-1 alleging that respondent did not have a supply of supplemental roof support materials as close as practical to the working section. The third \$58 penalty was proposed for a violation of Section 75.313 alleging that the methane monitor on the loading machine was inoperative. The fourth \$58 penalty was proposed for an alleged violation of Section 75.1704 alleging that the No. 2 designated escapeway was not properly marked. The fifth \$58 penalty was proposed for a violation of Section 75.1713-7(c) alleging that first-aid supplies were not being stored in a suitable manner. The sixth \$58 penalty was proposed for a violation of Section 75.316 alleging that respondent had failed to install a permanent stopping in the third crosscut from the working face. I find that the proposed penalties of \$58 each were appropriately determined by the Assessment Office for the above-described six alleged violations since they were correctly found to be the result of ordinary negligence and to involve a moderate degree of gravity.

The Assessment Office appropriately found that a penalty of \$46 should be assessed for an alleged violation of Section 75.512 alleging that respondent failed to record the last date on which electrical equipment was inspected. The Assessment Office found that this alleged violation of Section 75.512 was the result of ordinary negligence and was nonserious.

The Assessment Office proposed a penalty of \$86 for violation of Section 75.202 alleging that 36 posts had been dislodged along the haulage roadway where men and coal are transported daily. Although the Assessment Office classified the alleged dislodging of posts to be the result of ordinary negligence, the penalty points were increased above the mid range for the criterion of negligence and the gravity of the violation was considered to be more serious than the other violations which have been discussed above. A penalty of \$86 for dislodging 36 posts along the haulageway is acceptable for a small mine such as the one here involved.

The Assessment Office proposed a penalty of \$110 for the final violation in this proceeding. That notice of violation alleged that respondent had failed to support adequately a rock in the roof of the haulageway. The rock was about 16 feet wide and 6 feet long. The Assessment Office rated respondent's negligence in this instance to be close to the maximum for ordinary negligence and considered that the violation involved a

high degree of gravity. The penalty of \$110 is acceptable for

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a serious violation involving a small mine such as the one under consideration in this case.

For the reasons set forth above, I find that the settlement proposed by the parties should be approved.

WHEREFORE, it is ordered:

(A) The request for approval of settlement is granted and the settlement agreement is approved.

(B) If Deby Coal Company has not already done so, it shall pay civil penalties totaling \$590 within 30 days from the date of this decision. The penalties are allocated to the alleged violations as follows:

Notice No. 1	HM (8-1)	1/17/78	75.1100-2(i)(2)	.....	\$	58.00
Notice No. 4	HM (8-4)	1/17/78	75.202-1	.....		58.00
Notice No. 1	HM (8-7)	1/24/78	75.512	.....		46.00
Notice No. 2	HM (8-8)	1/24/78	75.313	.....		58.00
Notice No. 4	HM (8-10)	1/24/78	75.1704	.....		58.00
Notice No. 1	HM (8-11)	2/23/78	75.1713-7(c)	.....		58.00
Notice No. 2	HM (8-12)	2/23/78	75.202	.....		86.00
Notice No. 3	HM (8-13)	2/23/78	75.202	.....		110.00
Notice No. 2	HM (8-15)	2/28/78	75.316	.....		58.00
Total Settlement Penalties in This Proceeding					\$	590.00

Richard C. Steffey  
Administrative Law Judge