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SOL (MSHA) V. PYRO MINING
DDATE:
19800128
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), v. PYRO MINING COMPANY,	PETITIONER RESPONDENT	Civil Penalty Proceeding Docket Nos. Assessment Control Nos. KENT 79-181 15-11702-03001 Pyro Central Shop KENT 79-182 15-10815-03010 Wheatcroft Mine KENT 79-183 15-02131-03020 Pyro Mine No. 2 KENT 79-184 15-10353-03019V KENT 79-185 15-10353-03020 KENT 79-186 15-10353-03021 Pyro Mine No. 6 KENT 79-187 15-10339-03017 Pyro Mine No. 11
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DECISION APPROVING SETTLEMENT

Counsel for the Secretary of Labor filed on December 31, 1979, in the above-entitled proceeding a motion for approval of settlement. Under the settlement agreement, respondent would pay penalties totaling \$8,378 instead of penalties totaling \$9,505 as proposed by the Assessment Office. Respondent's motion was accompanied by a considerable number of documents to support the settlement agreement.

The motion for approval of settlement states that the parties considered the six criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977. Three of those criteria may be given a generalized evaluation which will apply to all of the 40 violations alleged in MSHA's seven Petitions for Assessment of Civil Penalty, while the remaining three criteria will be considered on an individual basis when each of the alleged violations is hereinafter reviewed. The three criteria which may be given a general evaluation are the size of respondent's business, the question of whether payment of penalties would cause respondent to discontinue in business, and respondent's history of previous violations.

The orders of assessment prepared by the Assessment Office show that respondent's mines produce a total of 1,634,680 tons of coal per year, whereas an income statement submitted with the motion for approval of settlement shows that respondent sold a total of 1,228,353 tons of coal during the 12 months ending July 31, 1979. Since respondent's income statement provides data which are more current than the production figures in the assessment orders, I shall use the income statement for the purpose of determining the size of respondent's business. Assuming that respondent operated its mines for 250 days during the 12 months covered by its income statement, the average daily production would have been 4,912 tons per day. On the basis of those figures, I find that respondent is a large operator and that penalties in an upper range of magnitude should be assessed to the extent that they are determined under the criterion of the size of respondent's business.

The financial data submitted with the motion for approval of settlement show that respondent lost about \$14.6 million during the 12 months ending July 31, 1979, of which an amount of at least \$7 million is attributable to its coal operations. Respondent's quarterly report submitted to the Securities and Exchange Commission states that respondent is in violation of the debt and equity covenants under its financing agreements with both of its lenders, but that respondent hopes to avoid defaulting under its agreement by selling its Corinne gas field in Mississippi for \$25,800,000 of which amount a sum of \$20,000,000 is to be paid in cash. The financial data also show that respondent's net losses made it unnecessary for respondent to provide for payment of any Federal income taxes for the periods ending January 31, 1978, and January 31, 1979.

On the other hand, the motion for approval of settlement (p. 5) states that "[w]hile the agreed upon penalty will affect respondent's financial posture it will have no effect on respondent's ability to remain in business." Respondent's answers to MSHA's Petitions for Assessment of Civil Penalty indicate that respondent does not agree with the above-quoted statement in the motion for approval of settlement because respondent's answers claim that "civil penalties will substantially affect our ability to stay in business." Respondent's answers further allege that inflation, higher interest rates, and EPA restrictions, which required respondent to construct expensive cleaning plants which wash away 30 percent of the coal which respondent used to sell, all contribute to respondent's inability to make a profit on its coal operations.

It would appear that the financial data submitted by respondent would support a finding that payment of penalties might cause respondent to discontinue in business if it were not for the fact that one of the few optimistic statements in respondent's quarterly report to the SEC states as follows (p. 9):

Coal revenues increased significantly principally due to a 31% increase in tons sold by the Registrant's

Kentucky operation and the fact that a substantial portion of the sales

were under higher-priced contracts. In addition, the Registrant's Alabama operation was shut down during a significant portion of the three months ended October 31, 1978 due to the erection of a large dragline on the property.

After considering all of the financial data submitted by respondent, I conclude that the payment of penalties will not cause respondent to discontinue in business.

The assessment orders in this proceeding assign anywhere from 0 points (Docket No. KENT 79-181) to 13 points (Docket No. KENT 79-187) for assessment of penalties under the criterion of history of previous violations. The data submitted in support of the motion for approval of settlement do not provide information which would permit me to find that the Assessment Office has attributed more penalty points to the criterion of history of previous violations than is warranted. In the absence of any facts to show that the Assessment Office has erred in its evaluation of the criterion of history of previous violations, I find that the Assessment Office has made reasonable conclusions with respect to the criterion of history of previous violations and no further effort to analyze the Assessment Office's determinations as to that criterion will be made.

The remaining three criteria, namely, respondent's negligence, if any, the gravity of the alleged violations, and respondent's good faith effort to achieve rapid compliance will hereinafter be individually considered in my review of the specific violations alleged in each docket.

Docket No. KENT 79-181

Citation No. 795149 alleged that respondent had violated section 77.1607(o) because a truck used during daylight hours was not provided with operative headlights. The Assessment Office considered that the violation involved no negligence, that it was moderately serious, and that there was a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$14 and respondent has agreed to pay the full proposed penalty. I find that the Assessment Office derived an appropriate penalty and that respondent's agreement to pay the full amount should be approved.

Citation No. 795152 alleged that respondent had violated section 77.410 because a truck had not been equipped with an adequate backup alarm. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated normal good faith in achieving compliance. The Assessment Office proposed a penalty of \$60. Respondent has agreed to pay the full proposed penalty. I find that the Assessment Office properly arrived at an appropriate penalty and that respondent's agreement to pay the full amount should be approved.

Docket No. KENT 79-182

Citation No. 795701 alleged that respondent had violated section 75.1100-1(e) because the fire extinguisher on a battery-powered locomotive

did not contain expellant or powder. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated a better than average good faith effort to achieve compliance. The Assessment Office proposed a penalty of \$90 and respondent has agreed to pay a penalty of \$65. The operator's evaluation sheet shows that the operator believed the alleged violation to be nonserious because the operator did not think that the violation would result in injury or that the conditions surrounding the violation would be likely to cause a fire. If a hearing had been held, questions would have been raised as to the degree of the operator's negligence and the gravity of the violation. In such circumstances, I find that respondent's agreement to pay a penalty of \$65 is reasonable and should be approved.

Citation No. 795702 alleged that respondent had violated section 75.1100-2(d) by failing to equip a battery-powered personnel carrier with a fire extinguisher. The Assessment Office found that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$98 and respondent has agreed to pay a penalty of \$70. Respondent's evaluation sheet claims that respondent was nonnegligent because an unauthorized person had removed the fire extinguisher. Respondent did not believe that the conditions existing at the time the citation was written would produce a fire and doubted that any injury would occur as a result of the absence of the fire extinguisher. If a hearing had been held, questions would have been raised as to the degree of respondent's negligence and the gravity of the alleged violation. Therefore, respondent's agreement to pay a reduced penalty of \$70 is approved.

Citation No. 795703 alleged that respondent had violated section 75.601-1 because the circuit breaker for the trailing cable to a roof-bolting machine was set 400 amps higher than it should have been. The Assessment Office considered the violation to involve ordinary negligence, that it was serious, and that respondent demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$98 and respondent has agreed to pay a penalty of \$70. Respondent alleges that no overcurrent was present. In such circumstances, a question exists as to whether the Assessment Office may have assigned an excessive number of points to the criterion of gravity. I find that respondent's agreement to pay a penalty of \$70 should be approved.

Citation No. 795704 alleged that respondent had violated section 75.1722(a) because the tramming chain and tramming sprockets on the feeder were not guarded. The Assessment Office believed that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated a better than average effort to achieve compliance. Respondent has agreed to pay a penalty of \$100, whereas the Assessment Office proposed a penalty of \$130. There are remarks on the inspector's statement indicating that the feeder only moves when the conveyor belt is

being extended and that no more than one person would be likely to be injured by an unguarded trammig chain. I find that a question exists as to whether the Assessment Office assigned

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an excessive number of points under the criteria of negligence and gravity and that respondent's agreement to pay a reduced penalty of \$100 should be approved.

Citation No. 795705 alleged that respondent had violated section 75.601 because the circuit breaker for the trailing cable of an offside shuttle car had been set 400 amps higher than it should have been. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$114 and respondent has agreed to pay a penalty of \$80. Respondent claims that no overcurrent was present. That allegation raises an issue as to whether the violation was as serious as the Assessment Office believed. I find that respondent's agreement to pay a reduced penalty of \$80 should be approved.

Citation No. 795706 alleged that respondent had violated section 75.523 because the deenergization device, or panic bar, on a shuttle car was inoperative when tested. The Assessment Office believed that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$130 and respondent has agreed to pay a penalty of \$100. Respondent claims that injury resulting from the violation was improbable and that few miners would be exposed to danger by the violation. Additionally, it should be noted that respondent had provided a panic bar, but it had become inoperative and there is nothing in the file to show how long the bar had been in an inoperative condition. In such circumstances, the violation may not have involved as much negligence or gravity as the Assessment Office assigned to those criteria. Therefore, respondent's agreement to pay a reduced penalty of \$100 should be approved.

Citation No. 795712 alleged that respondent had violated section 75.904 because the 400-amp circuit breaker for the conveyor belt drive was not marked for identification. The Assessment Office considered that the violation involved ordinary negligence, that it was very serious, and that respondent had demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$150 and respondent has agreed to pay \$115. Remarks on the inspector's statement allege that no other plug the size of the one for the conveyor belt was being used. Also the main plug had been marked, but the suboutlet had not been marked. Those factors would reduce the likelihood that the circuit breaker for the belt drive would be mistaken for the circuit breaker for a different piece of equipment. That consideration indicates that the Assessment Office may have assigned an excessive number of points under the criteria of negligence and gravity. Therefore, I find that respondent's agreement to pay a reduced penalty of \$115 should be approved.

Citation No. 795713 alleged that respondent had violated section 75.601 because the circuit breaker for the battery

charger was set 400 amps above the allowable setting. The Assessment Office believed that the violation involved ordinary negligence, that it was serious, and that respondent had

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demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$98 and respondent has agreed to pay \$70. Respondent claims that conditions were unfavorable for occurrence of any injuries and that no injury caused by the violation could be expected. Therefore, the Assessment Office may have assigned more points under the criteria of both negligence and gravity than the facts warranted and respondent's agreement to pay a reduced penalty of \$70 should be approved.

Citation No. 795714 alleged that respondent had violated section 75.516 because the power cables for the battery charger were not supported on insulators and were permitted to come into contact with combustible materials at several locations. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$106 and respondent has agreed to pay a penalty of \$75. Respondent claims that the power cable was insulated. That fact indicates that the likelihood of fire was improbable and that the Assessment Office may have rated the violation as involving more negligence and gravity than the facts warrant. Therefore, respondent's offer to pay a reduced penalty of \$75 should be approved.

Citation No. 795715 alleged that respondent had violated section 75.1722(b) because the tail pulley roller on a conveyor belt was not adequately guarded. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated a normal good faith effort to achieve compliance. The Assessment Office proposed a penalty of \$150 and respondent has agreed to pay a penalty of \$115. It should be noted that the citation refers to failure to guard "adequately" rather than a failure to provide any guard at all. If a hearing had been held, a question of fact would have arisen as to whether respondent's guard was adequate. In such circumstances, it appears that the Assessment Office may have assigned a larger number of points under the criterion of gravity than was warranted. Therefore, respondent's agreement to pay a reduced penalty of \$115 should be approved.

Citation No. 795716 alleged that respondent had violated section 75.515 because the trailing cable for the coal drill was not equipped with a suitable device to prevent strain from being exerted on the electrical connections within the drill. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$150 and respondent has agreed to pay a penalty of \$115. The conditions set forth in the citation are ambiguous. The inspector alleges that respondent failed to provide a "suitable" fitting, but he fails to say that no fitting at all was provided. Additionally, there is nothing to show that there was any sign that the cable was worn or would have exposed anyone to an electrical shock at the time the citation was written. There is nothing in the inspector's statement which

would show that the violation was as serious as the Assessment Office considered it to be. Therefore, respondent's offer to pay a penalty of \$115 should be approved.

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Citation No. 795717 alleged that respondent had violated section 75.1722(b) because the pulley roller to the tailpiece had not been adequately guarded. The Assessment Office considered that this violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$150 and respondent has agreed to pay a penalty of \$115. Here again, the citation shows that respondent had provided a guard, but that it was not as "adequate" as the inspector believed it should have been. The fact that respondent had provided a guard shows that the Assessment Office may have assigned an undue number of points under the criterion of negligence and justifies acceptance of respondent's offer to pay a reduced penalty of \$115.

Citation No. 795718 alleged that respondent had violated section 75.400 because loose coal and coal dust had been permitted to accumulate on and around the two 40-horsepower motors on the feeder. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a normal good faith effort to achieve compliance. The Assessment Office proposed a penalty of \$122 and respondent has agreed to pay a penalty of \$95. The Assessment Office reduced the proposed penalties with respect to several of the citations involved in this docket when respondent corrected the alleged violation within a period of 30 minutes. The alleged violation in this instance was corrected within a period of only 30 minutes, but no credit was given for that rapid effort to achieve compliance in this instance. Giving proper credit to respondent's effort to achieve rapid compliance justifies acceptance of respondent's offer to pay a reduced penalty of \$95.

Docket No. KENT 79-183

Citation No. 794820 alleged that respondent had violated section 75.606 because there was evidence that the trailing cable to the cutting machine had been run over by rubber-tired equipment. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$106 and respondent has agreed to pay a penalty of \$79. The inspector's statement indicates that respondent took extraordinary steps to gain compliance in this instance. Also the inspector's termination of the citation states that there was no short circuit in the trailing cable and that no damage had been done to the trailing cable by the equipment which appears to have run over it. In such circumstances, the Assessment Office may have assigned more points under the criterion of gravity than was warranted. Therefore, respondent's offer to pay a penalty of \$79 should be approved.

Docket No. KENT 79-184

Order No. 795432 was issued under the unwarrantable failure provisions of the Act and alleged that respondent had violated

section 75.200 by failing to install bolts on 5-foot centers in compliance with its roof-control plan. The roof bolts were alleged to be up to 6-1/2 feet apart in the Nos. 1

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through 6 entries and 9 feet away from the ribs. Over 98 roof bolts had to be installed to restore the area to the requirements of the roof-control plan. The Assessment Office waived the point system normally used in determining penalties and made findings of fact as to the six criteria to support its proposed penalty of \$5,000 which respondent has agreed to pay in full. The inspector's statement alleges that two roof falls had previously occurred in the section here involved. It appears that enough negligence and gravity were associated with the alleged violation to warrant imposition of a penalty of \$5,000. Respondent's agreement to pay the full amount should be approved.

Docket No. KENT 79-185

Citation No. 9948483 alleged that respondent had violated section 70.250 by failing to submit a valid respirable dust sample or give a reason for not sampling for one employee. The Assessment Office considered that the violation involved ordinary negligence, that it was nonserious, and that respondent demonstrated a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$84 and respondent has agreed to pay \$60. Section 70.250 requires that the atmosphere of each miner on a working section be sampled at intervals of 120 days and that the atmosphere of other miners be sampled at intervals of 180 days. The samples required under section 70.250 are unrelated to the sampling of the high-risk employee whose samples are used to determine if an operator's mine is in compliance with the respirable-dust program. While there is generally some negligence associated with the failure to submit the 120-day and 180-day samples, a penalty of \$60 is a sufficient amount unless there is evidence to show that an operator has been grossly negligent in continuously violating section 70.250. Since there is no evidence in this proceeding to show that respondent frequently violated section 70.250, I believe that respondent's agreement to pay \$60 should be approved.

Citation No. 795155 alleged that respondent had violated section 75.1714 because the operator of a roof-bolting machine was not provided with a self-rescue device. The Assessment Office considered that the violation involved no negligence, that it was serious, and that respondent demonstrated an average good faith effort to achieve compliance. The Assessment Office proposed a penalty of \$84 and respondent has agreed to pay \$60. The inspector's statement does not rate the seriousness of the violation. There must have been extenuating facts associated with the alleged violation or the inspector would not have considered the operator to be nonnegligent. In such circumstances, I believe that respondent's agreement to pay a penalty of \$60 should be approved.

Docket No. KENT 79-186

Citation No. 795340 alleged that respondent had violated section 75.603 because a temporary splice in the trailing cable for the coal drill had been made by tying the conductors in square knots. The Assessment Office considered that the

violation involved ordinary negligence, that it was serious,

and that respondent demonstrated a better than average effort to achieve compliance. The Assessment Office proposed a penalty of \$122 and respondent has agreed to pay \$95. Respondent's evaluation sheet claims that the splice was well insulated and that no one would have been injured because of the use of square knots in the temporary splice. Moreover, respondent states that production was immediately stopped and the splice was remade in the correct manner. In such circumstances, the Assessment Office may have assigned more penalty points to the criterion of gravity than were warranted. Therefore, respondent's agreement to pay a penalty of \$95 should be approved.

Citation No. 795521 alleged that respondent had violated section 75.605 because respondent had failed to clamp the trailing cable of the coal drill to the cable reel so as to prevent strain from being placed on the electrical connections. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$122 and respondent has agreed to pay \$95. The Assessment Office may have assigned excessive penalty points because the operator's evaluation sheet shows that the operator felt that it was improbable that an injury would occur as a result of the alleged violation. The operator believed the violation to be nonserious because the grounding mechanism was in good condition as well as the circuit breaker. Moreover, respondent alleges that it had made a better than average effort to achieve rapid compliance, but the Assessment Office considered that there had been only a normal effort to achieve compliance. In such circumstances, respondent's agreement to pay \$95 should be approved.

Citation No. 795522 alleged that respondent had violated section 75.1107-16(b) because a loading machine's fire-suppression device had been rendered inoperative by a severed hose. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that the operator had demonstrated an outstanding effort to achieve compliance. The Assessment Office proposed a penalty of \$84 and respondent has agreed to pay \$60. The operator's evaluation sheet claims that the operator was nonnegligent and alleges that any injury as a result of the violation was improbable since the loading machine was in a clean condition and there was good ventilation in the mine. In such circumstances, the Assessment Office may have assigned an excessive number of points under the criteria of negligence and gravity. Therefore, respondent's agreement to pay a penalty of \$60 should be approved.

Citation No. 795523 alleges that respondent had violated section 75.603 because a temporary splice had been made in the trailing cable on a roof-bolting machine and the splice was close to the reel. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. Respondent's evaluation sheet claims that it

was nonnegligent because the miners had been instructed in proper splicing procedures and alleges that the violation was nonserious because the splice

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had been well insulated. In such circumstances, respondent's agreement to pay a penalty of \$95, instead of the penalty of \$122 proposed by the Assessment Office, should be approved.

Citation No. 795524 alleged that respondent had violated section 75.1722 because 5 feet of the fencing used to guard the belt head were missing which would permit a person to come in contact with moving head rollers. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated a better than average effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$114 and respondent has agreed to pay \$80. The Assessment Office may have assigned an excessive number of points under the criteria of negligence and gravity because respondent's evaluation sheet claims that respondent was nonnegligent and that the likelihood of injury was improbable. In such circumstances, respondent's offer to pay a penalty of \$80 should be approved.

Citation No. 795525 alleged that respondent had violated section 75.202 because overhanging ribs ranging in size from 12 to 28 inches were observed in four entries. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$106 and respondent has agreed to pay \$75. The respondent's evaluation sheet claims that the violation involved no negligence and alleges that the overhanging ribs were not large enough to have been likely to injure anyone. It appears that the Assessment Office may have assigned an excessive number of points under the criteria of negligence and gravity. Therefore, respondent's agreement to pay a penalty of \$75 should be approved.

Citation No. 795526 alleged that respondent had violated section 75.503 because the loading machine had two openings which exceeded the width permitted by the permissibility standards. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that the operator demonstrated a better than average effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$98 and respondent has agreed to pay \$70. Respondent's evaluation sheet claims that the mine atmosphere contained no methane and that the weekly check of equipment had revealed no permissibility violations. In view of the contested facts, the Assessment Office may have assigned excessive points under the criteria of negligence and gravity. Therefore, respondent's offer to pay a penalty of \$70 should be approved.

Citation Nos. 795527 and 795528 alleged that respondent had violated section 75.503 because permissibility violations existed in a shuttle car and cutting machine, respectively. The Assessment Office considered that both violations involved ordinary negligence, that they were serious, and that respondent demonstrated a better than average effort to achieve rapid compliance with respect to Citation No. 795527 and demonstrated a

normal effort to achieve compliance with respect to Citation No.
795528. The Assessment

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Office proposed a penalty of \$122 and \$98 for Citation Nos. 795527 and 795528, respectively, and respondent has agreed to pay penalties of \$95 and \$70, respectively. The operator's evaluation sheet claims that the weekly examination had revealed no permissibility violations, that no methane was present, and that ventilation was good. In view of the extenuating circumstances alleged by the operator, I find that respondent's agreement to pay penalties of \$95 and \$70 should be approved.

Citation No. 795536 alleged that respondent had violated section 75.1722 because the belt feeder head roller was not adequately guarded in that the wire guard had been pulled back far enough to expose a person to the hazard of being caught in the roller. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had made a better than average effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$114 and respondent has agreed to pay a penalty of \$80. Respondent's evaluation sheet indicates that the belt examiners had not yet made their inspection as the citation was written at 7:50 a.m. Respondent corrected the violation within 10 minutes after the citation was written. In such circumstances, I find that respondent's agreement to pay \$80 should be approved.

Citation No. 795538 alleged that respondent had violated section 75.200 because a crosscut between the Nos. 4 and 5 entries was 25 feet wide in violation of respondent's roof-control plan which permits crosscuts to be no more than 20 feet wide. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$170 and respondent has agreed to pay \$130. Respondent's evaluation sheet claims that the wide crosscut was needed for the purpose of turning the mining machine around and that it was improbable that injury would result from the violation, and that production was stopped so that the crosscut could be timbered immediately. Respondent's evaluation sheet raises questions as to whether the alleged violation was as serious or involved as much negligence as the Assessment Office believed. Therefore, respondent's agreement to pay a penalty of \$130 should be approved.

Citation No. 795539, as modified, alleged that respondent had violated section 75.316 because there was an excessive amount of dust in the No. 4 Unit as a result of respondent's failure to use water to control dust. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$106 and respondent has agreed to pay \$75. Respondent's evaluation sheet contends that no violation occurred as no dust was in suspension. In view of the question of fact which would have been raised if a hearing had been held, I find that respondent's agreement to pay a penalty of \$75 should be approved.

Citation No. 795540 alleged that respondent had violated section 75.200 because a roof bolter was not provided with two temporary supports as

required by the roof-control plan. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$98 and respondent has agreed to pay \$70. Respondent's evaluation sheet alleges that no roof bolting had yet been done and that the roof was in good condition. If a hearing had been held, questions of fact would have been raised as to respondent's negligence and as to the gravity associated with failure to install temporary supports before any roof bolting had been started. Therefore, respondent's agreement to pay a penalty of \$70 should be approved.

Citation No. 796521 alleged that respondent had violated section 75.503 because there were nonpermissible openings on a scoop while it was being used in by the last open crosscut in No. 2 entry. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$106 and respondent has agreed to pay \$75. Respondent's evaluation sheet claims that no methane was present in the mine atmosphere and that there was no likelihood of an explosion. In view of the questions of fact raised by respondent's claim that the violation was nonserious, respondent's agreement to pay a penalty of \$75 should be approved.

Citation No. 796522 alleged that respondent had violated section 75.316 because an airlock had not been provided at the belt tailpiece. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$84 and respondent has agreed to pay a penalty of \$60. Respondent's evaluation sheet claims that an airlock had been constructed but that it had been torn down when it became caught in the belt conveyor. Respondent also claims that good ventilation was being maintained on the section. If a hearing had been held, questions of fact would have been raised as to whether respondent was negligent and as to whether the violation was serious in the circumstances. Therefore, respondent's agreement to pay \$60 should be approved.

Citation No. 796523 alleged that respondent had violated section 75.703 because a battery charger was being used to charge the batteries on a scoop without providing a proper frame ground for the charger. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent had demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$140 and respondent has agreed to pay a penalty of \$110. Respondent's evaluation sheet claims that the frame ground was torn loose during the shift preceding the shift on which the inspector's citation was written and that chargers are equipped with back-up grounding systems. If a hearing had been held, questions of fact would have been raised as to the extent of

respondent's negligence and as to the gravity of the violation.
Therefore, I find that respondent's agreement to pay a penalty of
\$110 should be approved.

Citation No. 796525 alleged that respondent had violated section 75.303 because inadequate examinations of the conveyor belts had been made in that obvious violations were observed by the inspector but a record of the violation had not been recorded in the approved belt examiners' book located on the surface. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent made a normal effort to achieve compliance. Respondent's evaluation sheet claims that management had no knowledge that the belts were not being adequately examined and that they had been examined that day. If a hearing had been held, a number of factual issues would have been raised as to whether respondent was negligent and as to the gravity of the alleged violation. Therefore, respondent's agreement to pay a penalty of \$140, instead of the penalty of \$180 proposed by the Assessment Office, should be approved.

Citation No. 596531 alleged that respondent had violated section 75.606 because a scoop was observed as it was driven over the energized cable of the loading machine. The Assessment Office considered that the violation involved no negligence, that it was serious, and that respondent had demonstrated a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$84 and respondent has agreed to pay \$60. Respondent's evaluation sheet claims that management had no control over the situation because the employee disobeyed company orders in running over the cable. Respondent also claims that the grounding mechanism and circuit breaker were operative. The inspector's citation shows that the violation was corrected within 10 minutes and that it was determined that the loading machine's cable had not been damaged. The Assessment Office failed to give respondent credit for stopping production to make a quick examination of the cable. In such circumstances, respondent's agreement to pay a penalty of \$60 should be approved.

Docket No. KENT 79-187

Citation No. 401741 alleged that respondent had violated section 70.100(b) because the average concentration of respirable dust in the environment of the high-risk miner was 3.6 milligrams per cubic meter of air. The Assessment Office considered that the violation involved ordinary negligence, that it was very serious, and that respondent demonstrated a normal effort to achieve compliance. The Assessment Office proposed a penalty of \$255 and respondent has agreed to pay a penalty of \$200. Neither the official file nor the materials submitted with the motion to approve settlement contain any statements showing that the Assessment Office incorrectly overstated the negligence or seriousness of the alleged violation. On the other hand, respondent's agreement to pay \$200 for this violation of the respirable dust standard shows that the parties have recognized that the degree of negligence and gravity associated with this alleged violation was rather high. Since there is nothing in the record to show how long the condition lasted, I conclude that the miners were not exposed to 3.6 milligrams of respirable dust for

a long period of time. Therefore, respondent's agreement to pay \$200 is reasonable and should be approved.

Citation No. 794976 alleged that respondent had violated section 75.301 because respondent had not provided enough air at the working face for the velocity of the air to be measured with an anemometer. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated an outstanding effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$106 and respondent has agreed to pay \$75. Respondent's evaluation sheet explains that the curtain had been torn by a shuttle car, that the helper of the cutting-machine operator was in the process of moving up the waterline, and that no methane was detected. The inspector's citation shows that respondent increased the velocity of air to 3,600 cubic feet within 5 minutes after the citation was written. I find that there were enough extenuating circumstances to justify acceptance of respondent's offer to pay a penalty of \$75.

Citation No. 794978 alleged that respondent had violated section 75.316 by failing to have two water sprays on the cutting machine. Respondent's ventilation, methane, and dust control plan requires that the machine have two operable sprays. The Assessment Office considered that the violation involved ordinary negligence, that it was serious, and that respondent demonstrated a better than average effort to achieve rapid compliance. The Assessment Office proposed a penalty of \$140 and respondent has agreed to pay \$110. Respondent's evaluation sheet claims that two water sprays had been installed on the cutting machine and that one had been knocked off. Respondent claims that management was unaware of the missing spray because one spray was doing an adequate job of wetting the coal. Respondent also claims that production was stopped and that an additional spray was installed within a period of 30 minutes. In such extenuating circumstances, respondent's offer to pay a penalty of \$110 should be approved.

WHEREFORE, it is ordered:

(A) For the reasons hereinbefore given, the seven motions for approval of settlement filed in this proceeding on December 31, 1979, are granted and the settlement agreements are approved.

(B) Pursuant to the settlement agreements, respondent, within 30 days from the date of this decision, shall pay civil penalties totaling \$8,378.00 which are allocated to the respective alleged violation as follows:

Docket No. KENT 79-181

Citation No. 795149	3/8/79	77.1607(o).....	\$	14.00
Citation No. 795152	3/12/79	77.410.....		60.00

Total Settlement Penalties in					
Docket No. KENT 79-181.....				\$	74.00

Docket No. KENT 79-182

Citation No. 795701	3/20/79	75.1100-1(e).....	\$ 65.00
Citation No. 795702	3/20/79	75.1100-2(d).....	70.00

Citation No. 795703	3/20/79	75.601-1.....	70.00
Citation No. 795704	3/20/79	75.1722(a).....	100.00
Citation No. 795705	3/20/79	75.601.....	80.00
Citation No. 795706	3/20/79	75.523.....	100.00
Citation No. 795712	3/27/79	75.904.....	115.00
Citation No. 795713	3/27/79	75.601.....	70.00
Citation No. 795714	3/27/79	75.516.....	75.00
Citation No. 795715	3/27/79	75.1722(b).....	115.00
Citation No. 795716	3/29/79	75.515.....	115.00
Citation No. 795717	3/29/79	75.1722(b).....	115.00
Citation No. 795718	3/29/79	75.400.....	95.00

Total Settlement Penalties in
Docket No. KENT 79-182.....\$1,185.00

Docket No. KENT 79-183

Citation No. 794820	2/5/79	75.606.....	\$ 79.00
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Total Settlement Penalties in
Docket No. KENT 79-183.....\$ 79.00

Docket No. KENT 79-184

Order No. 795432	2/15/79	75.200.....	\$5,000.00
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Total Settlement Penalties in
Docket No. KENT 79-184.....\$5,000.00

Docket No. KENT 79-185

Citation No. 9948483	3/2/79	70.250.....	\$ 60.00
Citation No. 795155	4/3/79	75.1714.....	60.00

Total Settlement Penalties in
Docket No. KENT 79-185..... \$ 120.00

Docket No. KENT 79-186

Citation No. 795340	3/19/79	75.603.....	\$ 95.00
Citation No. 795521	3/19/79	75.605.....	95.00
Citation No. 795522	3/19/79	75.1107-16(b).....	60.00
Citation No. 795523	3/20/79	75.603.....	95.00
Citation No. 795524	3/20/79	75.1722.....	80.00
Citation No. 795525	3/21/79	75.202.....	75.00
Citation No. 795526	3/21/79	75.503.....	70.00
Citation No. 795527	3/21/79	75.503.....	95.00
Citation No. 795528	3/21/79	75.503.....	70.00
Citation No. 795536	3/27/79	75.1722.....	80.00
Citation No. 795538	3/27/79	75.200.....	130.00

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Citation No. 795539	3/27/79	75.316.....	75.00
Citation No. 795540	3/27/79	75.200.....	70.00
Citation No. 796521	3/27/79	75.503.....	75.00
Citation No. 796522	3/27/79	75.316.....	60.00
Citation No. 796523	3/27/79	75.703.....	110.00
Citation No. 796525	3/29/79	75.303.....	140.00
Citation No. 796531	3/30/79	75.606.....	60.00

Total Settlement Penalties in

Docket No. KENT 79-186..... \$1,535.00

Docket No. KENT 79-187

Citation No. 401741	12/12/78	70.100(b).....	\$ 200.00
Citation No. 794976	4/6/79	75.301.....	75.00
Citation No. 794978	4/6/79	75.316.....	110.00

Total Settlement Penalties in

Docket No. KENT 79-187..... \$ 385.00

Total Settlement Penalties in

This Proceeding..... \$8,378.00

Richard C. Steffey
Administrative Law Judge