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SOL (MSHA) V. BUCKEYE COAL MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceeding

Docket No. LAKE 79-109
A/O No. 33-01357-03003

v.

West Point Strip Mine

BUCKEYE COAL MINING COMPANY, INC.,
RESPONDENT

DECISION APPROVING SETTLEMENTS

ORDER TO PAY

The Solicitor has filed a motion to approve settlements in the above-captioned proceeding.

Citation No. 273083 was issued for a failure to conduct noise level surveys at six month intervals, as required by 30 CFR 71.303(a). The original assessment was \$150 and the recommended settlement is \$52. In support of her motion, the Solicitor states that both operator negligence and gravity had been overassessed: the operator's safety director thought he had conducted the survey, and the probability of occurrence was improbable as previous surveys had demonstrated no excessive noise exposures. I accept the Solicitor's representations, which indicate a low level of negligence and a lack of gravity. Accordingly, the recommended settlement is hereby approved.

Citation No. 784608 was issued when a portable fire extinguisher was found to be unusable and inoperative, a violation of 30 CFR 77.1110. The original assessment was \$34 and the recommended settlement is \$25. In support of her motion, the Solicitor states that the probability of injury was minimal as there were other fire extinguishers present in the area. I accept the Solicitor's representations. Accordingly, the recommended settlement is hereby approved. I would however, note that the original assessment was low. I cannot understand why the Solicitor would agree to any reduction. However, the difference involved is so small that further expenditure of the taxpayers' money on this matter is not justified.

The Solicitor further states that Citation Nos. 784606 and 784607 have been settled for the original amounts of \$48 and \$66, respectively. However, she gives no reasons for the recommended settlements. Proceedings before the Commission are de novo, and a sufficient basis must be provided for the approval of all settlements. Rather than disapprove these settlements, I have reviewed the citations, the assessment sheets and the inspector's statements. Based upon my own review of the violations, I conclude the recommended settlements are consistent with and will

effectuate the purposes of the Act. The recommended settlements are therefore, approved. In the future, however the Solicitor should given reasons.

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ORDER

The operator is ORDERED to pay \$191 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge