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SOL (MSHA) V. ISLAND CREEK COAL
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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

Doclet No. WEVA 79-338
A.O. No. 46-01382-03013V

v.

Guyan No. 4 Mine

ISLAND CREEK COAL COMPANY,
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

The Solicitor filed a motion to approve a settlement in this matter for \$375. The amount originally proposed was \$750.

The violation was due to Respondent's failure to comply with its roof control plan. Specifically, the motion stated that "wide places had been driven in five entries at the inspected mine in violation of the roof control plan." The motion continued that there is a serious dispute as to what the roof control plan required.

The motion stated that a West Virginia state inspector accompanied the MSHA inspector on the day in question, and issued a citation for the same condition.

The state inspector re-inspected on the next day and terminated his citation. When the MSHA inspector re-inspected a day later, he determined that the violation was not sufficiently abated and issued a withdrawal order. The motion stated that since the state inspector agreed with the operator that the condition was promptly abated, there is a dispute as to the operator's negligence which justifies a reduction in the proposed penalty. Additionally, the motion indicated that the mine had been closed since September 1979.

Upon consideration of the motion and the six criteria set forth in Section 110(i) of the Federal Mine Safety and Health Act of 1977, I find that the proposed settlement is sufficiently substantial to effectuate the purposes and policies of the Act and I approve the settlement.

ORDER

Respondent is ORDERED to pay \$375 in penalties within 30 days of the date of this Order.

Edwin S. Bernstein
Administrative Law Judge

