

CCASE:
SOL (MSHA) V. LUNAR MINING
DDATE:
19800319
TTEXT:

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. PENN 79-160
A.O. No. 36-05123-03010

v.

Solar No. 7 Mine

LUNAR MINING COMPANY,
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

The Solicitor filed a motion to approve a settlement in this matter for \$478. The amount proposed by the MSHA Assessment Office for these eight citations was \$736. The motion indicated that the six criteria set forth in Section 110(i) of the Federal Mine Safety and Health Act of 1977 were considered during settlement negotiations.

Citations 09903940 and 09904033 were issued because Respondent failed to submit timely respirable dust samples as required by 30 C.F.R. 70.250. The Assessment Office recommended that penalties of \$84 be assessed for each of these citations. The motion stated that penalties of \$38 for each citation would be more appropriate. According to the motion, Respondent is experiencing financial difficulty, and to save money has asked an affiliated mine to take dust samples for Respondent's miners. It is thus asserted that Respondent was not negligent in failing to submit timely samples. I have serious reservations about this explanation. I do not believe that Respondent can avoid having the negligence of the "affiliated mine" imputed to it, especially when the affiliated mine was apparently retained specifically for this purpose. However, in view of recent challenges to the respirable dust program which make the outcome of this case far from certain, I believe the recommended settlement is appropriate and I approve it.

Citation 0617653 was issued because a line brattice used to provide ventilation to the working face was installed more than 10 feet from "the area of deepest penetration to which any portion of the face has been advanced," in violation of 30 C.F.R.

75.302-1(a) and the mine's ventilation plan. The motion state that while Respondent's negligence was low, this was a serious violation because trace amounts of methane had been detected shortly before this area of the mine was inspected. Accordingly, the need for adequate ventilation was especially great. I agree with the Solicitor that the full \$72 proposed penalty is an appropriate assessment.

A \$122 penalty was proposed for Citation 0617655, involving a violation of 30 C.F.R. 75.503. A lock washer was missing

from under a bolt in the bottom of the main contactor compartment
of a shuttle car which rendered

~733

the car impermissible. The motion stated that Respondent's degree of negligence was low because it was difficult to detect the defect. The motion urges that because of the low degree of negligence, a \$56 assessment is appropriate. I agree.

Citation 0617657 was issued when it was discovered that inadequate ventilation was reaching a working face of Respondent's mine because of a loose line brattice. This constituted a violation of Respondent's ventilation plan. See 30 C.F.R. 75.316. The motion stated that an assessment of \$84 is more appropriate for this violation than the \$160 proposed by the Assessment Office. This is purportedly because of Respondent's low degree of negligence since the brattice had been properly installed, and was secure against the roof during earlier inspections. I approve that recommended settlement.

For Citations 0617658 and 0617659, the motion stated that the original proposals of \$48 and \$44 respectively are appropriate assessments. Citation 0617658 involved another violation of 30 C.F.R. 75.316, while Citation 0617659 involved an omission on the mine's electrical map. See 30 C.F.R. 75.508. I agree.

The final violation, Citation 0617660, was issued for not complying with 30 C.F.R. 75.313, which requires an operative methane monitor on all electric face cutting equipment. Respondent was cited for having an inoperative monitor on a continuous mining machine. The Assessment Office proposed a \$122 penalty. The motion stated that this should be reduced to \$98 since (a) the miner operator carried a methane testing lamp at all times, and (b) the Solar No. 7 Mine had never previously liberated methane, nor has any methane been detected since the issuance of the citation. However, trace amounts of methane had been detected in the section in which the violation was cited. I approve the recommended settlement for this citation.

ORDER

Respondent is ORDERED to pay \$478 in penalties within 30 days of the date of this Order.

Edwin S. Bernstein
Administrative Law Judge