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SOL (MSHA) V. CEDAR 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

Docket No. WEVA 80-106
A.O. No. 46-04628-03009V

v.

Coal Fork No. 1 Mine

CEDAR COAL COMPANY,
RESPONDENT

DECISION AND ORDER

The parties move for approval of a settlement of a charge that the operator knowingly premitted an excessive accumulation of loose coal, coal dust and float coal dust to exist for an extended period of time (almost a month) along the numbers 2, 3 and 4 belt conveyors of the 3 Left Section of the Coal Fork No. 1 Mine. The accumulation was very dry and extended for a distance of 1,700 feet at depths of 1 to 5 inches. The inspector's gravity sheet showed the potential for a fatal ignition was high due to the presence of 20 stuck idler rollers and two idler rollers with bad bearings on the number 2 belt. After a conference, the assessment office adhered to its original assessment of \$2,000.00 based on a finding that the violation created a serious hazard of a fire or explosion and resulted from the operator's negligence.

Based on an independent evaluation and de novo review of the circumstances, I find the amount of the settlement proposed, \$2,000.00, is not in accord with the purposes and policy of the Act. MSHA's conclusion that only one violation occurred is erroneous as a matter of fact and law. See, Consolidation Coal Company, Docket No. WEVA 79-354, (March 3, 1980). The record shows that at least three separate and distinct safety hazards occurred as a result of the operator's unwarrantable failure to institute or adhere to a reasonable cleanup program. It also shows that the violation on the number 2 belt was extremely serious due to the existence of the stuck idler rollers. In addition, the fact that these conditions were reported as hazards in the preshift reports for a period of almost 30 days demonstrates a reckless disregard for safety by top mine management that requires a finding of gross negligence.

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For these reasons, I find the amount of the penalty warranted and that best calculated to deter future violations and ensure voluntary compliance is \$3,000.00.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, DENIED. It is FURTHER ORDERED the operator pay a penalty of \$3,000.00 in full settlement of the violations charged on or before Friday, April 18, 1980, and that subject to payment the captioned petition be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge