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SOL (MSHA) V. PEABODY 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. KENT 79-11
A.O. No. 15-02709-03032 V

v.

Camp No. 1 Mine

PEABODY COAL COMPANY,
RESPONDENT

DECISION

This is a civil penalty proceeding initiated by the petitioner against the respondent through the filing of a proposal for assessment of civil penalties pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for one alleged violation of certain mandatory safety standards promulgated pursuant to the Act.

Respondent filed a timely answer and the matter was scheduled for hearing in Evansville, Indiana, June 26, 1980. However, by motion filed May 27, 1980, petitioner seeks approval of a proposed settlement. The citation, initial assessment, and the proposed settlement amount is as follows:

Citation No.	Date	30 CFR Standard	Assessment	Settlement
396441	4/18/78	75.400	\$2,500	\$1,250

Discussion

Petitioner advances the following arguments in support of the proposed settlement:

The citation alleges a violation of safety standard 30 C.F.R. 75.400, and particularly that loose coal, coal dust, and float coal dust were permitted to accumulate along the belt conveyor entry in No. 4 east off 2 main south. This violation is a result of a low degree of ordinary negligence, and the probability of an occurrence against which the cited standard is directed was remote due to the fact that the operator had duly noted the

condition in the crew shift examination book and immediately had instituted steps to correct the condition before production was to begin.

It is the parties' belief that the proof would show that the spillage of coal and the accumulation of float coal dust occurred during the latter portion of the second shift on April 17, 1978. This is the last production shift before the citation was issued on April 18, 1978. Furthermore, the proof would show that the spillage and accumulation was duly noted in the preshift examination book, and at the time the citation was issued coal was not being produced. In addition, the respondent had taken steps immediately to correct the condition before production of coal would begin.

Concluding, therefore, the violation is a result of a low degree of ordinary negligence. The occurrence of the event against which the cited standard is directed was improbable due to the circumstances set forth above. In addition, the respondent is entitled to maximum good faith consideration by achieving rapid compliance.

In addition to the foregoing, petitioner states that respondent's history of prior violations does not appear to be excessive, that respondent is a large operator and the penalty agreed upon by the parties will have no effect on its ability to remain in business. Finally, petitioner asserts that the parties believe that approval of the proposed settlement is in the public interest and will further the intent and purpose of the Act.

Conclusion

After careful review of the arguments submitted by the petitioner in support of the proposed settlement, and after review of the pleadings and the information of record concerning the six statutory criteria contained in section 110(i) of the Act, I conclude that the proposed settlement disposition of this case is reasonable, will adequately protect the public interest, and should be approved.

Order

Pursuant to Commission Rule 30, 29 CFR 2700.30, settlement is approved and respondent is ordered to pay a civil penalty in the amount of \$1,250 in satisfaction of the citation in question, payment to be made to MSHA within thirty (30) days of the date of this decision and order. Upon receipt of payment, this matter is dismissed. The hearing scheduled for Evansville, Indiana, June 26, 1980, is cancelled.

George A. Koutras
Administrative Law Judge

