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SOL (MSHA) V. GREGOIRE COALS  
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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 80-74  
A.O. No. 46-05206-03009 V

v.

No. 4 Mine

GREGOIRE COALS, INC.,  
RESPONDENT

DECISION AND ORDER

The parties more for approval of a settlement of the two unwarrantable failure roof control violations charged at 50% of the \$2,000 initially assessed.

Based on an independent evaluation and de novo review of the parties' excellent prehearing submissions and motion, I find the violations while serious occurred without the fault of the operator. They were in all probability the result of willfully reckless conduct on the part of certain disgruntled miners. In fact, on this record the operator makes out a prima facie case for a civil, if not criminal, investigation of the acts of sabotage that allegedly resulted in the violations charged.

I have previously noted, Warner Co., PENN 79-161-M, 2 FMSHRC 972 (April 28, 1980); U.S. Steel Corp., PENN 79-123, 2 FMSHRC %y(3)6D (May 20, 1980), the absence of interest on the part of MSHA in investigating or filing charges against rank-and-file miners who either deliberately or through an inexcusable lack of safety consciousness endanger themselves or their fellow workers. In my opinion section 110(c) of the Act is not limited to supervisory employees but reaches every miner of whatever rank or pay classification. I believe that because all miners are statutory agents of the operator within the meaning of sections 3(e) and 110(c) of the 1977 Mine Act they are subject to the civil and criminal sanctions of the Act for knowingly willful violations of the mandatory safety standards.

It is my firm belief that if every miner was made aware of the fact that his occupational conduct is subject to the civil and criminal sanctions of the Mine Safety Law mine fatalities and disabling injuries would be sharply reduced. It is encouraging to note that my concern is shared by Congressman Gaydos, Chairman of the House Subcommittee on Health and Safety. Mr. Gaydos recently stated he is urging MSHA to take

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administrative steps to require all miners to follow safe practices. 1 BNA Mine Safety and Health Reporter 564 (May 21, 1980).

With respect to the instant case, I conclude the settlement proposed is clearly appropriate and in accord with the purposes and policy of the Act. This is true without even considering the financial impairment claimed.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the amount of the penalty agreed upon, \$1,000, on or before Monday, June 30, 1980, and that subject to payment the captioned matter be, and hereby is, DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge