

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

2 5 JUL 1980

SECRETARY OF LABOR, : Civil Penalty Proceedings  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), :  
Petitioner : Docket No. KENT 80-155  
: A.O. No. 15-02709-03071V  
v. :  
: Camp No. 1 Mine  
PEABODY COAL COMPANY, :  
Respondent : Docket No. KENT 80-156  
: A.O. No. 15-02069-03011  
: Sinclair Strip Mine  
: Docket No. KENT 80-157  
: A.O. No. 15-05046-030588  
: Alston No. 3 UG Mine

DECISIONS

Appearances: George Drumming, Jr., Attorney, U.S. Department of Labor,  
Nashville, Tennessee, for petitioner;  
Thomas Gallagher, Esquire, St. Louis, Missouri, for  
respondent.

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings were docketed for hearings in Evansville, Indiana, June 26, 1980, along with another proceeding involving the same parties. The parties made a proposal to settle these dockets without the need for an evidentiary hearing and they were afforded an opportunity to present their arguments in support of their proposed settlement on the record.

These cases are civil penalty proceedings initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, through the filing of civil penalty proposals for a total of five alleged violations of certain mandatory safety standards promulgated pursuant to the Act. Respondent filed timely answers contesting the citations, requested hearings in Evansville, but as indicated above, the parties subsequently proposed to settle the cases. The citations, initial **assessments**, and the proposed settlement amounts are as follows:

Docket No. KENT SO-155

<u>Citation No.</u>	<u>Date</u>	<u>30 C.F.R. Section</u>	<u>Assessment</u>	<u>Settlement</u>
0798644	7/27/79	75.400	\$1,500	\$ 500
0798285	7/31/79	75.1101-7(b)	1,500	500
0798291	8/14/79	75.200	1,500	1,500

Docket No. RENT 80-156

<u>Citation No.</u>	<u>Date</u>	<u>30 C.F.R. Section</u>	<u>Assessment</u>	<u>Settlement</u>
0799651	10/11/79	77.807	\$ 180	\$ 180

Docket No. KENT 80-157

<u>Citation No.</u>	<u>Date</u>	<u>30 C.F.R. Section</u>	<u>Assessment</u>	<u>Settlement</u>
0797795	8/9/79	75.400	\$3,000	\$1,500

DISCUSSION

Docket No. KENT 80-155 concerns three-citations. Citation No. 0798291 concerns a violation of the mine roof-control plan and abatement was achieved within an hour after the issuance of the citation. The proposed settlement is for 100 percent of the initial proposed settlement.

Citation No. 0798644 concerns an alleged accumulation of loose coal, rock, and some float coal dust along a belt and belt idlers. Respondent argued that its records reflected that during the third shift on the day before the citation issued, eight belt shovelers were working on the belt. On the day the citation issued, four belt shovelers were working. Thus, respondent argues that it was making a good faith effort to keep the belt clean of accumulations (**Tr. 8**). Abatement was achieved the same day the citation issued by cleaning and rock dusting the belt and respondent exercised good faith compliance (**Tr. 7**).

Citation No. 0798285 concerns a water sprinkler system which provided protection for only 23 feet of a belt conveyor drive. However, respondent pointed out that section 75.1101-7(b) is intended to provide fire protection over the belt drive which normally is 35 to 40 feet in length. In this case, the belt drive being used on the day of the inspection was a portable drive approximately 18 feet long. Consequently, while the existing water spray system afforded protection for only 23 feet it did in fact extend over the 18-foot portable belt drive and afforded fire protection (**Tr. 8, 11**).

In addition to the foregoing, **petitioner asserted** that respondent is a large operator, that its prior mine history of violations is not excessive for an operation of its size, and that each citation here in question resulted from ordinary negligence. While the conditions cited were serious,

respondent exhibited good faith abatement and the penalties agreed to will not adversely affect respondent's ability to Continue in business.

Docket No. KENT 80-156 concern8 an alleged violation of section 77.807 for failure to adequately protect a drill trailing cable operating at the pit high wall from being run over by mobile equipment. Although respondent recognize8 that section 77.807 deal8 with high voltage transmission cables, while section 77.604, which **was** not cited, **specifically covers** trailing **cables**, it nonetheless agreed to pay the full assessment of \$180 and it did 80 because it believe8 that **MSHA** could establish the fact of violation, that it could amend its pleading8 to cite the more appropriate section 77.604, and respondent candidly conceded that it wa8 aware of the specific section it had violated and would not be prejudiced by any amendment to the pleading8 (**Tr.15-19**).

Petitioner **asserted** that the inspector who **issued** the citation wa8 available to testify regarding the citation and that he would testify there **is** not very much difference in a trailing cable and a high-voltage cable (**Tr. 16**). Petitioner also asserted that the violation was **serious**, that **it** resulted from ordinary negligence, **and was** abated in good faith. Further, petitioner asserted that respondent's mining operation8 are large, that the penalty will not adversely affect it8 ability to remain in business, and that the previous history of citation8 at the mine is not excessive (**Tr. 14**).

Docket No. KENT 80-157 concern8 an alleged accumulation of loose coal in a belt entry, and float coal dust on the mine floor and belt-control box (**Tr. 20**). Petitioner again asserted that the mine operation is large, that the previous history of violation8 at the mine site in question wa8 not excessive. The conditions cited were serious, resulted from ordinary negligence, and payment of the proposed settlement amount will not adversely affect **respondent's** ability to remain in business (**Tr.20**).

With regard to the **circumstances** surrounding the cited conditions, **respondent** asserted that had the case proceeded to hearing, it would present the testimony of the union belt walker who walked the area prior to the inspector and **observed** nothing of consequences, and particularly no imminent danger. Further, the mine manager **would** dispute the inspector's measurement8 concerning the accumulations and would also testify that the cited coal dust was in fact dust from rock which **was** being tranaported on the belt. The area of the alleged accumulation was approximately 12 **inches** high and 8 feet long, and not 14 feet long as described by the inspector (**Tr. 19-24**).

Petitioner agreed that the condition8 were abated in good faith and that the loose coal wa8 apparently loaded out immediately (**Tr. 25, 29**).


#### CONCLUSION

After careful review and consideration of the argument8 presented by the parties in support of the proposed settlement disposition of these **cases**, I find that they are reasonable and in the public interest and they

are approved. The total settlement amount of \$4,180 for the five contested citations is reasonable considering all of the **circumstances** presented in these cases.

ORDER

Respondent IS ORDERED to pay civil penalties in the amounts indicated above, totaling \$4,180, within thirty (30) days of the date of these decisions. Upon receipt of payment by the petitioner, these cases are dismissed.

  
George A. Koutras  
Administrative Law Judge

Distribution:

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