

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
SKYLINE TOWERS NO. 2, 10TH FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

27 AUG 1980

SECRETARY OF LABOR, : Civil Penalty Proceeding  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 79-302  
Petitioner : A/O No. 15-11571-03001  
v. :  
C. J. RUST CONSTRUCTION COMPANY, : Goldenoak Surface Mine  
Respondent :

DECISION

Appearances: George Drumming, Jr., Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, for Petitioner; Byron W. Terry, Safety Director, C. J. Rust Construction Company, Owensboro, Kentucky, for Respondent.

Before: Judge Cook

On October 9, 1979, the Mine Safety and Health Administration (Petitioner) filed a proposal for a penalty in the above-captioned case pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (Act). An answer was filed by C. J. Rust Construction Company (Respondent) on November 2, 1979. Subsequent thereto, a prehearing order was issued and the matter was scheduled for hearing on the merits to commence at 9:30 a.m. on June 24, 1980, in Owensboro, Kentucky. The hearing convened as scheduled with representatives of both parties present. Petitioner thereupon moved for approval of settlement.

Information as to the six statutory criteria contained in section 110 of the Act has been submitted. This information has provided a full disclosure of the nature of the settlement and the basis for the original determination. Thus, the parties have complied with the intent of the law that settlement be a matter of public record.

The proposed settlement is identified as follows:

<u>Citation No.</u>	<u>Date</u>	<u>30 C.F.R. Standard</u>	<u>Assessment</u>	<u>Settlement</u>
796586	4/19/79	71.300	\$72	\$72

The following reasons were advanced in support of the proposed settlement:

**MR. DRUMMING:** Yes, Your Honor. The Respondent and I have worked out an arrangement whereby the penalty **is** set for \$72 and will be paid in full and the discussion of the assessed criteria is follows:

1. A small operator. The annual tonnage for the company is 134,814. The annual tonnage for the mine is 50,722. The \* \* • history is not excessive, for the [preceding] 24 months, there have been no assessed violations, but there [have] been **three** inspection days. As a matter of fact, the computer office in Denver has no information computer printout prior to **April 19, 1979**. The degree of negligence is ordinary negligence. It is a serious violation, but it would not result in immediate harm. This type of violation results in a **long-term** problem of hearing damage. **It is** a noise violation, sir.

JUDGE COOK: Did you state what the regulation is?

**MR. DRUMMING:** Okay, the standard is 71.300.

JUDGE COOK: And what is the basic allegation?

**MR. DRUMMING:** That a supplemental noise-survey conducted on April 18, 1979 shows that the operator on the No. 12 dozer. The operator was exposed to a reading of, it looks like 303. And this exceeds the noise standard of **132**.

JUDGE COOK: You say that 132 is the proper figure, the maximum?

**MR. DRUMMING:** Yes, sir. And the reading at the time was **303**.

JUDGE COOK: Is the inspector here who wrote that?

**MR. DRUMMING:** No, Your Honor. It is Inspector James Curtis and he is not here.

JUDGE COOK: If you're sure. Apparently you are having difficulty reading that, is that correct?

**MR. DRUMMING:** Yes, well I can see **now**. It's a reading "Of" and I thought that "**of**" was another number, but **it's** a reading of 303.

JUDGE COOK: **Alright**. And you say that the reading according to that should have been?

MR. DRUMMING: Should have been the standard of, should have been 132 and they exceeded the 132.

And number 5, that there was normal good faith as to the abatement of this violation.

JUDGE COOK: Was it actually abated by some procedure reducing the noise or how can you, can you indicate how?

MR. DRUMMING: Okay. A supplemental noise survey was made and showed that the reading, pardon me one moment, Your Honor. Yes, Your Honor, the abatement was done by Supplemental Survey [that] showed a reading at that time of 83 and it's well below the standard 132.

JUDGE COOK: Very well.

MR. DRUMMING: And finally that the penalty agreed upon will not [affect Respondent's ability to continue in] business.

JUDGE COOK: **Alright**, now, Mr. Terry, apparently you are agreeable to pay 100 percent?

MR. TERRY: Yes, Your Honor. After discussing it with the mine operator we agree that in this particular case we would go ahead and settle it for the full amount of \$73 or whatever the dollar figure was.

JUDGE COOK: **Alright**. And Mr. Drumming, then I presume you are making a motion for approval of that settlement?

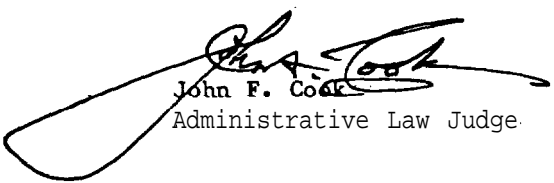
MR. DRUMMING: Yes, Your Honor. **Based** upon the discussed criteria with respective recommendation that the approved settlement of \$72, which is the original assessed amount for the penalty of this matter.

After according the aforementioned reasons due consideration, they have been found to support the proposed settlement. A disposition approving the settlement will adequately protect the public interest.

ORDER

Accordingly, IT IS ORDERED that the proposed settlement, as outlined above, be, and hereby is APPROVED.

IT IS FURTHER ORDERED that Respondent, within 30 days of the date of this decision, pay the agreed-upon penalty of \$72 assessed in this proceeding.

  
John F. Cook  
Administrative Law Judge

**Distribution:**

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