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SOL (MSHA) V. NACCO MINING  
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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. LAKE 80-290  
A/O No. 33-01159-03086

v.

Powhatan No. 6 Mine

NACCO MINING COMPANY,  
RESPONDENT

DECISION

This case consists of a petition for the assessment of civil penalties for two alleged violations of the Act. The Solicitor has filed a motion to approve a settlement for one of the two citations.

Citation 1008201 was issued for an alleged violation of 30 CFR 75.316. On September 8, 1980 a hearing was held in Secretary of Labor v. Nacco Mining Company, Quarto Mining Company and The North American Coal Corporation, LAKE 80-251, et al. in which the same provision of respondent's dust control plan at issue in this citation was litigated. In those cases a decision dated September 22, 1980 held invalid this provision of the dust control plan. The decision in LAKE 80-251 is dispositive of this citation.

Citation 1008126 was issued when exposed power conductors were observed in two locations on the trailing cable of a welding machine, a violation of 30 CFR 75.517. The original assessment for the alleged violation was \$210. The recommended settlement is \$140. In support of her motion, the Solicitor advises that although the jacket of the cable was cut, the insulation itself was intact. Further, the floor in the area of the cable was dry and the welding machine had been in operation on only an infrequent basis. These factors indicate a more remote probability of occurrence than was originally indicated. I accept the Solicitor's representations. The recommended settlement is approved.

ORDER

Citation 1008201 is hereby VACATED and the petition to assess a civil penalty is DISMISSED insofar as it concerns this citation.

The operator is ORDERED to pay \$140 within 30 days of the date of this decision.

Paul Merlin

Assistant Chief Administrative Law Judge