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SOL (MSHA) V. FIRE CREEK 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 Proceedings

Docket No. SE 79-24
A.O. No. 40-01612-03010

v.

Docket No. SE 79-40
A.O. No. 40-01621-03011

FIRE CREEK COAL COMPANY
OF TENNESSEE,
RESPONDENT

Docket No. SE 79-68
A.O. No. 40-01612-03012

Fire Creek No. 1 Mine

DECISIONS APPROVING SETTLEMENTS

Appearances: George Drumming, Jr., Attorney, U.S. Department of
Labor, Nashville, Tennessee, for the petitioner

Before: Judge Koutras

Statement of the proceedings

These civil penalty proceedings were initiated by the petitioner against the respondent through the filing of proposals 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 11 alleged violations of certain mandatory safety standards promulgated pursuant to the Act.

Respondent filed timely answers and the cases were scheduled for hearing in Knoxville, Tennessee, October 30, 1980. However, in view of a proposed settlement made by the parties, petitioner was permitted to submit its arguments on the record concerning the proposed settlement disposition of the dockets, a bench decision was issued, and it is herein finalized in writing as required by the Commission's rules. The citations, initial assessments, and the proposed settlement amounts are as follows:

Docket No. SE 79-24

Citation No.	Date	30 CFR Section	Assessment	Settlement
131663	11/17/78	75.1100-2(F)	\$ 140	\$ 52

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Docket No. SE 79-40

Citation No.	Date	30 CFR Section	Assessment	Settlement
0743707	1/25/79	75.1100-2(e)	\$ 90	\$ 33
0743708	1/25/79	75.807	98	36
0743709	1/25/79	75.200	98	36
0743710	1/25/79	75.200	78	29
0743711	1/26/79	75.1714	114	42
0743712	1/26/79	75.304	180	67
0743713	1/26/79	75.200	114	42
0743714	1/26/79	75.1102	98	36
			\$ 870	\$ 321

Docket No. SE 79-68

Citation No.	Date	30 CFR Section	Assessment	Settlement
0743732	2/27/79	75.302(a)	\$ 140	\$ 52
0743733	2/27/79	75.200	72	27
			\$ 212	\$ 79

Discussion

In support of the proposed settlement negotiated by the parties petitioner has submitted information concerning the six statutory criteria found in section 110(i) of the Act. This information reflects that respondent is a small operator, has no excessive history of prior violations, abated all of the citations in question in good faith, and exhibited ordinary negligence in connection with the conditions or practices cited as violations. Further, while all of the citations ranged from serious to moderately serious, petitioner points out that none of them resulted in any injuries to miners.

In a prior decision issued by me on April 5, 1979, in MSHA v. Fire Creek Coal Company, Dockets BARB 79-3-P, BARB 79-4-P, and BARB 79-59-P, concerning a total of 27 citations issued during March and April, 1978, I found that respondent presented credible evidence and documentation concerning the financial condition of the respondent's small company. I found that the initial assessments made by MSHA, if affirmed, would effectively put the respondent out of business. In the circumstances, the financial condition of the respondent was considered in my assessment of civil penalties totaling \$2,000 for the citations in question.

In the instant proceedings, respondent has reasserted the financial and economic conditions of its company, states that it is on the verge of bankruptcy, indicates that the mine is shut down and is not producing, and that there is little or no income from the company's mining venture.

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Petitioner's counsel confirmed the fact that the Fire Creek No. 1 mine has been closed since July 1979. Counsel also agreed that respondent's financial condition is such that full payment of the civil penalties initially assessed by MSHA for the citations in question in these proceedings would in fact adversely affect respondent's stated intention of attempting at some time in the future to re-open the mine and again engage in the business of mining coal. Further, petitioner asserted that respondent's adverse financial condition stems from the fact that respondent's mining operation was conducted on a contract basis with a contract miner who purportedly absconded with the company assets.

Conclusion

After careful review and consideration of the pleadings, arguments, and submission in support of the petitioner's motion to approve the proposed settlement of this case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 20 C.F.R. 2700.30, the settlement is APPROVED.

ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the citations in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge