

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

December 10, 1980

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

CO-OP MINING COMPANY

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: Docket No. DENV 79-1-P  
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## DECISION

On October 16, 1979, the administrative law judge issued a decision and order approving the proposed penalty settlement of the parties with respect to an alleged violation of 30 C.F.R. §70.250(b). 1/ The approval was based upon a stipulation of settlement prepared by the parties. The Secretary alleged that Co-op had failed to submit a respirable dust sample for one miner whom the Secretary identified by his social security number, 528-96-5108.

The parties stipulated that Co-op's records indicated the company never employed a miner with that social security number. They also stipulated that Co-op did employ a miner with the social security number 528-96-5109, and that the required dust sample had been submitted for that miner. These stipulated facts were quoted by the judge in his decision and order, which we directed for review sua sponte.

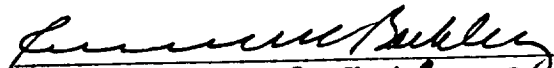
We hold that under the circumstances in this case, the settlement should not have been approved. The parties' stipulation shows that the alleged violation did not occur. The legislative history of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. (Supp. III 1979), states, "The purpose of a civil penalty is to induce those officials responsible for the operation of a mine to comply with the Act and its standards." 2/ To assure this purpose is served section 110(k)

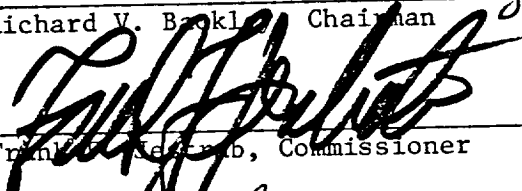
1/ 30 CFR §70.250(b) provides:

One sample of respirable dust shall be taken from the mine atmosphere to which each individual miner assigned to a working section is exposed at least once every 120 days, except those miners already sampled during such 120-day period in sampling cycles conducted under the provisions of §§70.210, 70.220, and 70.230 of this part.

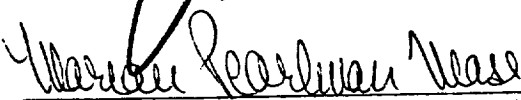
2/ S. Rep. No. 95-181, 95th Cong., 1st Sess. 41 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th., Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 629 (1978).

of the Mine Act places an affirmative duty upon us to oversee settlements. Compliance with the Act and its standards is not fostered by payment of a civil penalty where the stipulated facts establish that no violation occurred. Accordingly, the notice of violation is vacated, the order approving the settlement and ordering payment is reversed, and the proceeding is dismissed.

  
Richard V. Book, Chairman

  
Frank J. Nease, Commissioner

  
A. E. Lawson, Commissioner

  
Marian Pearlman Nease, Commissioner

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