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SOL (MSHA) V. CO-OP 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. DENV 79-1-P
A.O. No. 42-0081-02015
Co-op Mine

v.

CO-OP MINING COMPANY,
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

This proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent on October 4, 1978, pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), charging the respondent with one alleged violation of the provisions of 30 CFR 70.250(b), and seeking a civil penalty assessment in the amount of \$190 for the alleged violation.

By stipulation and joint motion filed October 9, 1979, pursuant to Commission Rule 29 CFR 2700.30, the parties propose to settle this case without a formal hearing by the petitioner amending the proposed penalty to reflect a penalty of \$25 rather than the \$190 which was initially proposed, and respondent agreeing to withdraw its contest and to pay the \$25 proposed penalty.

In support of the proposed settlement, the parties have taken into account, and have submitted information concerning the six statutory criteria set forth in section 110(a) of the Act, including the following:

History of previous violations - Respondent has had a total of 110 violations from July 27, 1975 to July 26, 1977, only one of which was a violation of 30 C.F.R. 250(b).

Size - Respondent operates a coal mine which mines between 30,000 and 50,000 tons of coal each year.
Ability to continue in business - Payment of the proposed penalty will not impair respondent's ability to continue in business.

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Good faith, negligence and gravity - Respondent is required by standard 30 C.F.R. 70.250(b) to take respirable dust samples from the mine atmosphere of miners at least once every 120 days. MSHA received information, allegedly from Respondent, that Respondent employed a miner with Social Security No. 528-96-5108. No respirable dust sample was submitted for an employee with that Social Security Number within the prescribed time, and an order for violation was ultimately issued. Respondent did in fact employ a miner with Social Security No. 528-96-5109, however, Respondent's personnel records show that no employee with the Social Security Number 528-96-5108 has ever been employed by Respondent, and Respondent's records show that samples for an employee with Social Security no. 528-96-5109 were submitted as required. Any error appears to have been clearly clerical in nature and MSHA does possess a sample for employee 528-96-5109 during the time in question.

DISCUSSION

After careful review and consideration of the argument in support of the proposed settlement, and taking into account those factors required to be considered by section 110(i) of the Act, I conclude and find that the proposed settlement should be approved. It would appear that the alleged citation in question resulted from a clerical error and does not in my view present a serious violation. Further, respondent is a small mine operator and has no significant prior history of violations.

ORDER

The settlement is approved, and the respondent is ORDERED to pay a civil penalty in the amount of \$25 within 30 days of the date of this decision and order in satisfaction of Citation No. 7-0770, July 26, 1977, 30 CFR 70.250(b). Upon receipt of payment, this case should be dismissed.

George A. Koutras
Administrative Law Judge