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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. WEVA 81-270
A.O. No. 46-01454-03076V

v.

Pursglove No. 15

CONSOLIDATION COAL CO.,
RESPONDENT

DECISION AND ORDER

The parties move for approval of a settlement (at 90% of the amount initially assessed) of a charge that on August 14, 1980, a federal mine inspector observed an accumulation of approximately 24 tons of loose coal in the number 2 and 4 entries of the 1 Right Section of the Pursglove No. 15 Mine. Sometime prior to this the condition had been noted by the section foreman, Michael Jackson, who took no corrective action. The record does not show what action or inaction by the section foreman or his superiors resulted in this excessive and dangerous accumulation of combustibles.

What is clear is that this was a violation that resulted from a culpable indifference on the part of management to a reasonably foreseeable and objectively ascertainable risk of serious bodily harm or death. Under existing law, this disregard for the safety of the mine is automatically imputable to the operator. As this case shows, enforcement would be seriously debilitated if this rule were changed so as to immunize operators from accountability for serious violations on a showing that the condition was attributable to an act of negligent indifference by an individual rank-and-file miner or his supervisor.

Based on an independent evaluation and de novo review of the circumstances, I find the proposed settlement is marginally acceptable. Once again I must voice my concern that no disciplinary action was taken against the individual or individuals responsible because management apparently feels such action is counterproductive to other objectives.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the amount of the settlement agreed upon, \$900, on or before

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Friday, June 19, and that subject to payment the captioned matter
be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge