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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,  
CONTESTANT

v.

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

Contest of Order

Docket No: WEVA 81-341-R  
Order No: 854357; 3/16/81

Purglove No. 15

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

v.

CONSOLIDATION COAL COMPANY,  
RESPONDENT

Civil Penalty Proceeding

Docket No: WEVA 81-441  
A.O. No: 46-01454-03090 V

Purglove No. 15

DECISION AND ORDER

The parties move for approval of a settlement of a violation that created a serious hazard of death or disabling injury in the event of a fire on the beltway in question. It was clearly an unwarrantable failure violation and in view of respondent's history of prior violations of the standard in question and its overall incidence of injury rate the violation merits a more severe penalty than the reduced (\$400 from \$750) penalty proposed for settlement.

On the other hand, the Commission has admonished its trial judges to adopt a "wise" rather than a "zealous" attitude toward enforcement of the Mine Safety Law. This translates as a "soft" rather than a "tough" policy of enforcement.

Respondent, of course, is tough, very tough. Knowing respondent as well as I do and knowing what this record reflects as to its attitude toward compliance, I think the settlement proposed is too low. The assessment office also thought it too low and I have little doubt MSHA would think it too low. But the Solicitor who speaks for the Secretary, rather than MSHA, thinks the penalty proposed is appropriate because the violation was more or less a run-of-the-mine type of violation. Furthermore, knowing the Commission as I do, I think the Commission, after consulting with the Solicitor, would not think it too low. That is what is known in some circles as "wise" enforcement. Thus, whether the penalty will deter future violations and ensure voluntary compliance seems almost immaterial.

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For these reasons, I reluctantly conclude the motion to approve settlement should be approved. I hope I am wrong and that the Commission will review this decision on its own motion and delineate a more "zealous" enforcement policy. If it does not I will be sadder but indeed wiser.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, APPROVED. It is FURTHER ORDERED that the operator pay the settlement agreed upon, \$400, on or before, Tuesday, December 1, 1981 and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge