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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

v.

BECKLEY COAL MINING CO.,  
RESPONDENT

Civil Penalty Proceeding

Docket No. WEVA 81-495  
A.O. No. 46-03092-03081

Beckley Mine

DECISION AND ORDER

For the reasons set forth in my interim decision of November 24, 1981, a copy of which is attached hereto and incorporated herein, the parties' amended motion to approve settlement in this matter in the total amount of \$660 is GRANTED. Accordingly, it is ORDERED that on or before Thursday, December 31, 1981, the operator pay the amount of the penalty agreed upon, \$660, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge

INTERIM DECISION AND ORDER

The parties move for approval of a settlement at 100% of the amount initially assessed for the two serious violations of the ventilation standards charged, namely \$320. DPZE1@@Keeping line curtain within 10 feet of the working face at all times is, admittedly, a difficult requirement; checking for the presence of a dangerous amount of methane before energizing electric face equipment at a working face is not. Furthermore, line curtain violations that vary up to 10 feet from the norm are not exceptionally hazardous as they are unlikely to trigger a fire or explosion and are easily detected. Detection of a failure to make a methane check is, on the other hand, almost fortuituous. This is because there is no requirement that a record of these checks be made or entered in the onshift or any other permanent report.

It is not surprising, therefore, that there were 25 previous violations of the line curtain requirement and only one of the methane check requirement during the preceding 24 months. DPZE1@@Because the latter requirement is so vital to safety, so difficult to detect and may result in what amounts to reckless endangerment, I find the amount proposed for settlement of this violation is insufficient to deter future violations and ensure voluntary compliance. It is my considered judgment that this violation, if proved, warrants the imposition of a penalty of \$500, not the \$160 proposed.

Accordingly, it is ORDERED:

1. That the motion to approve settlement be, and hereby is, GRANTED as to the line curtain violation and DENIED as to the methane check violation.

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2. That the operator pay the amount of the penalty agreed upon and approved for the line curtain violation, \$160, on or before Friday, December 4, 1981.

3. That unless on or before Friday, December 4, 1981, the parties amend their motion to approve settlement consistent with the views expressed herein, the requirements of the Pretrial Order of October 2, 1981 are reinstated as to the methane check violation, 30 C.F.R. 75.307 with compliance due as to Part A on December 18, 1981 and Part B on January 4, 1982.

Joseph B. Kennedy  
Administrative Law Judge