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SOL (MSHA) V. ENERGY COAL  
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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 83-62  
A/O No. 46-05793-03504

v.

Mine No. 14

ENERGY COAL CORPORATION,  
RESPONDENT

DECISION

The parties move for approval of their amended motion to approve settlement of the five violations charged. The original motion (in the amount of \$148.00) was denied by the trial judge on the ground that the amounts proposed for the backup alarm violations were insufficient to insure future compliance.

The widely shared view that backup alarm violations are not significant and substantial in the absence of a showing that miners were actually endangered by the unsafe condition is erroneous. In *Brown & Root v. OSHRC*, 639 F.2d 1289, 1294 (5th Cir. 1981), the court held the Secretary need not prove a specific employee was actually endangered by the operator's failure to provide an operable backup alarm, "but only that it was reasonably certain that some employee was or would be exposed to that danger." Thus, if the potential for contact with a piece of mobile equipment is reasonably foreseeable a serious injury is probable. Because the consequences of such a preventable condition are so grave, a penalty of \$20.00 fails to reflect the proper regulatory concern. As the court noted: "The goal of the Act is to prevent the first accident, not to serve as a source of consolation for the first victim or his survivors. Hence, no proof of specific instances where employees were exposed to the hazardous condition is necessary to support a finding of violation." *Id.*

Accordingly, and in the exercise of his power and duty to ensure that settlements are in accord with the purposes and policy of the Act, the trial judge recommended the penalties for the two backup alarm violations be increased from \$68 and \$20 respectively to \$200 each. The amended motion accepts this.

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Based on an independent evaluation and de novo review of the circumstances, I now find the settlement proposed is in accord with the purposes and policy of the Act.

It is ORDERED, therefore, that the motion to approve settlement be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the settlement agreed upon, \$460.00, on or before Friday, June 3, 1983, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge