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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. KENT 83-246
A. C. No. 15-12624-03503

v.

No. 1 Mine

R.F.H. COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Steffey

Counsel for the Secretary of Labor filed on October 13, 1983, in the above-entitled proceeding a motion for approval of settlement. Under the settlement agreement, respondent would pay civil penalties totaling \$10,000 instead of the penalties totaling \$47,580 proposed by the Mine Safety and Health Administration.

There are unique circumstances which warrant the approval of greatly reduced penalties in this proceeding. The No. 1 Mine was operated by five members of a single family. On January 20, 1982, four of the family members and three employees were underground and the remaining member of the family was on the surface of the mine when an enormous explosion occurred at the working faces. The explosion was propagated to the surface of the mine and the force of the explosion was so great that it killed all seven persons working underground and completely destroyed or considerably damaged all mining equipment in its path, including equipment on the surface of the mine. Respondent's owners are the widows of the four family members who were killed in the explosion with the exception of one owner who lost her brother and three uncles in the tragedy.

Financial data submitted by respondent's counsel indicate that the mine had no taxable income in the last year of its operation. The mine in which the explosion occurred has been permanently abandoned and sealed and the corporation has no intention of reentering the coal business at any time in the future. In such circumstances, the payment of civil penalties amounting to \$10,000 will undoubtedly be adequate to serve as a deterrent against future violations of the mandatory health and safety standards as intended by the Federal Mine Safety and Health Act of 1977. The untimely death of four members of the same family, the oldest of whom was only 39 years of age, will likewise remain as a permanent and painful memory for all persons involved.

Section 110(i) of the Act requires that six criteria be used in determining civil penalties. One of the six criteria is whether the payment of penalties will cause the operator to discontinue in business. Although respondent has already ceased to operate a coal business, I believe that the criterion of whether payment of penalties would cause an operator to discontinue in business is intended for application to factual conditions such as have been shown to exist in this proceeding.

The motion for approval of settlement has proposed an allocation of the \$10,000 in settlement penalties among the eight violations alleged in the pertinent orders and citations in a manner which is appropriate if one takes into consideration the other five criteria listed in section 110(i) of the Act.

According to MSHA's report of the underground explosion which occurred on January 20, 1982, the cause of the explosion was the firing of an explosive charge in the No. 6 entry which blew flames into the No. 5 entry in which coal dust was still in suspension from a prior explosives shot. MSHA's investigators found reason to believe that an inadequate amount of rock dust had been applied outby the entry in which the dust explosion occurred because the explosion was propagated from the face area of the mine clear to the surface of the mine. MSHA also found that a contributing factor to the explosion was respondent's failure to erect brattice curtains to within 10 feet of the working faces. Additional contributing factors were omission of stemming materials in the boreholes and insertion of excessive quantities of explosives in each borehole.

One of the violations pertained to failure to store explosives in the proper manner and place, but since the improperly stored explosives did not have anything to do with the explosion which occurred on January 20, 1982, MSHA did not recommend a large penalty for that alleged violation. Likewise, the alleged violation pertaining to the existence of cigarettes, cigarette lighters, and cigarette butts in the mine was not assigned a large penalty because there was no evidence that a lighted cigarette had contributed to the cause of the explosion. The motion for approval of settlement has appropriately allocated the largest portions of the settlement penalties to the alleged violations which seem to have contributed most to the cause of the explosion.

The above discussion shows that MSHA appropriately evaluated the two criteria of gravity and negligence in determining its proposed penalties. MSHA also considered the criterion of whether the operator showed a good-faith effort to achieve rapid compliance by noting that all of the alleged violations were abated when the respondent permanently abandoned and sealed the mine.

As to the criterion of the size of respondent's business, the proposed assessment sheet in the official file shows that the mine only produced 3,364 tons of coal on an annual basis. That amount of production warrants only a zero assignment of penalty points under the penalty formula described in 30 C.F.R. 100.3. The sixth and final criterion to be considered is respondent's history of previous violations. The proposed assessment sheet indicates that respondent was cited for only one violation of the mandatory health and safety standards prior to the writing of the citations and orders involved in this proceeding. That is a very favorable history of previous violations and warrants assignment of zero penalty points under section 100.3(c) of the penalty formula used by MSHA.

The discussion above shows that the large penalties proposed by MSHA were based primarily upon the criteria of gravity and negligence associated with the alleged violations, but MSHA could hardly have proposed smaller penalties than it did in light of the disastrous consequences of the violations which were described in the citations and orders and in MSHA's accident report. Therefore, I conclude that MSHA appropriately proposed the penalties hereinbefore discussed and that the parties' settlement agreement should be approved for the reasons heretofore given.

WHEREFORE, it is ordered:

(A) The motion for approval of settlement filed October 13, 1983, is granted and the parties' settlement agreement is approved.

(B) Pursuant to the settlement agreement, respondent, within 30 days from the date of this decision, shall pay civil penalties totaling \$10,000.00 which are allocated to the respective alleged violations as follows:

Citation No. 1196101 4/16/82	75.316.....	\$ 1,400.00
Order No. 1196102 4/16/82	75.401.....	1,300.00
Order No. 1196103 4/16/82	75.1306.....	500.00
Citation No. 1196108 4/16/82	75.1702.....	160.00
Order No. 1196112 4/16/82	75.1303.....	2,350.00
Order No. 1196112 4/16/82	75.400.....	2,350.00
Order No. 1196112 4/16/82	75.403.....	1,520.00
Citation No. 1196141 4/16/82	75.304.....	420.00
Total Settlement Penalties in This Proceeding		\$10,000.00

Richard C. Steffey
Administrative Law Judge