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SOL (MSHA) V. WEBSTER COUNTY 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 PROCEEDINGS

Docket No. KENT 83-216
A.C. No. 15-00672-03508

v.

Retiki Mine

WEBSTER COUNTY COAL CORP.,
RESPONDENT

Docket No. KENT 83-259
A.C. No. 15-02132-03513

Dotiki Mine

DECISIONS

Appearances: Darryl A. Stewart, Esq., Office of the Solicitor, U.S.
Department of Labor, Nashville, Tennessee, for Petitioner
Nick Carter, Esq., MAPCO, Inc., Lexington, Kentucky, for
Respondent

Before: Judge Koutras

Statement of the Cases

These proceedings concern proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to Section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 CFR 820(a), seeking civil penalty assessments for two alleged violations of mandatory health standard 30 CFR 70.100(a).

The respondent contested the citations, and pursuant to notice the cases were docketed for hearings in Evansville, Indiana during the term November 1-3, 1983. These cases were scheduled for trial on November 3, 1983. However, prior to the commencement of the hearings, respondent's counsel advised me that the respondent had decided not to litigate the cases further and counsel sought leave to dispose of the cases by tendering full payment of MSHA's proposed civil penalties. Under the circumstances, the parties were afforded an opportunity to present their proposals on the record, and

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petitioner's counsel presented arguments in support of a proposed settlement disposition of the cases pursuant to Commission Rule 30, 29 CFR 2700.30. The citations, initial assessments, and the proposed settlement amounts are as follows:

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Citation No.	Date	30 CFR Section	Assessment	Settlement
9949525	1/24/83	70.100(a)	\$227	\$227

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Citation No.	Date	30 CFR Section	Assessment	Settlement
2075782	3/3/83	70.100(a)	\$213	\$213

Discussion

The parties stipulated to the following:

1. At all times pertinent to these proceedings, Webster County Coal Corporation, was owner and operator of the Dotiki Mine in Webster County, Kentucky, and the Retiki Mine in Henderson County, Kentucky, and the mines are subject to the Federal Mine Safety and Health Act of 1977.
2. The presiding Administrative Law Judge has jurisdiction to hear and decide these cases.
3. The inspectors who issued the citations which are the subject of these proceedings are designated authorized representatives of the Secretary of Labor.
4. True and correct copies of the citations were served upon the operator.
5. The copies of the citations (Exhibits G-1 through G-2) are authentic copies and may be admitted as such, but not for the truth or relevance of the statements made therein.
6. Payment of the penalties assessed in these proceedings will have no effect on the operator's ability to continue in business.
7. The Dotiki Mine produces approximately 1,500,000 tons per year and the Retiki Mine produces approximately 690,000 tons per year.

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8. The operator demonstrated good faith in abating the conditions alleged in the citations which are the subject of these proceedings, as is credited in the proposed assessment.

In support of the proposed settlement disposition of these cases, petitioner's counsel asserted that after consideration of the statutory criteria found in Section 110(i) of the Act, as well as his consultation with the inspectors who issued the citations, he was of the view that the respondent's payment in full of the proposed penalty settlements is a reasonable disposition of these dockets and that the proposed settlements are in the public interest. Counsel also presented a computer print-out summarizing the respondent's history of prior citations.

After careful consideration and review of the pleadings filed in these cases, including the arguments submitted on the record in support of the proposed settlement dispositions by the parties, I find that they are reasonable and in the public interest, and pursuant to Commission Rule 30, 29 CFR 2700.30, they are APPROVED.

ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above within thirty (30) days of the date of these decisions, and upon receipt of payment by MSHA, these proceedings are dismissed.

George A. Koutras
Administrative Law Judge