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SOL (MSHA) V. MATHIES 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

v.

MATHIES COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 84-2
A.C. No. 36-00963-03525

Mathies Mine

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

On April 9, 1984, the Solicitor filed a Motion for Decision and Order Approving Settlement in the above-captioned case. The one violation at issue was originally assessed at \$2,000. The settlement proposed by the parties is for \$1,500.

Order No. 2104294 was issued for violation of 30 C.F.R. 75.200, for failure to comply with the approved roof control plan. Sacrifice coal was being mined when a roof fall occurred which covered the continuous miner and entrapped the operator for approximately 1 hour and 10 minutes.

The Solicitor submits that the \$500 reduction from the original assessment is warranted in view of the uncertainties of litigation and after detailed consideration of the six statutory criteria. The operator's negligence was assessed as high. Subsequent investigation revealed two mitigating factors regarding the level of negligence. First, the roof control plan was not being complied with in that sacrifice stumps of coal required to be left in place were mined. However, the Solicitor points out that the roof control plan does not specify a size for the sacrifice stumps that must be left unmined. Second, prior to the coal being mined from the cited area, there existed a "weak wall" condition at that location. In order to remove this potential hazard, the operator mined coal from the front stump of the sacrifice coal and eliminated the "weak wall" condition. This "weak wall" posed a potential hazard in particular to the miners recovering the crib by the cited area. Given these two factors, the Solicitor asserts that the negligence of the operator is reduced, and accurately reflected by the proposed reduction in the civil penalty.

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The Solicitor also considered gravity and the probability of harm associated with the violation. It was reasonably likely that the aforementioned mining of the sacrifice coal stump would have exposed the continuous miner operator to potential injury due to the roof fall.

The operator demonstrated a good faith effort to abate the violation. The operator reviewed the roof control plan with all miners involved in retreat mining and the violation was abated within the required time period.

I accept the Solicitor's representations and accordingly, the proposed settlement is hereby approved.

ORDER

The operator is hereby ORDERED to pay \$1,500 within 30 days of this decision.

Paul Merlin
Chief Administrative Law Judge