

CCASE:  
SOL (MSHA) V. EARTH COAL  
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TTEXT:

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. LAKE 84-14  
A.C. No. 12-01890-03507

v.

EARTH COAL COMPANY, INC.,  
RESPONDENT

Lengacher Mine No. 1

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the  
Solicitor, U.S. Department of Labor,  
Chicago, Illinois, for Petitioner;  
Mr. Byron W. Terry, Tell City, Indiana,  
for Respondent.

Before: Judge Melick

This case is before me upon a petition for assessment of civil penalty under section 110(a) of the Federal Mine Safety and Health Act of 1977 (the Act). At hearings in Evansville, Indiana, Petitioner moved to withdraw and vacate Citation No. 2353623 on the grounds that the cited Caterpillar Model 627 Scraper did not come within the scope of equipment covered by the cited regulation, 30 C.F.R. 77.1605(b). The motion was granted at hearing and is now affirmed. Following hearings on the merits, Petitioner filed a motion to approve a settlement agreement and to dismiss the case. A reduction in penalties from \$326 to \$250 was proposed. I have considered the testimony and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that Respondent pay the following penalties within 30 days of this decision:

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Citation No. 2343622	\$	150
Citation No. 2353624		50
Citation No. 2353625		50
Total		\$250

Gary Melick  
Assistant Chief Administrative Law Judge