

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

JUL 24 1984

VESTA MINING COMPANY,	:	CONTEST PROCEEDINGS
Contestant	:	
v.	:	Docket No. PENN 83-212-R
	:	Order No. 2104660; 6/16/83
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. PENN 83-225-R
ADMINISTRATION (MSHA),	:	Order No. 2105163-02; 7/25/83
Respondent	:	
	:	<b>Vesta Mine</b>
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	CIVIL PENALTY PROCEEDING
ADMINISTRATION (MSHA),	:	
Petitioner	:	Docket No. PENN 83-230
v.	:	A.C. No. 36-00962-03552
	:	<b>Vesta Mine</b>
VESTA MINING COMPANY,	:	
Respondent	:	

DECISION

Appearances: Barbara L. Krause, Esq., Smith, Heenan, Althen and Zanolli, Washington, D.C., for Contestant/Respondent:  
James Crawford, Esq., Office of the Solicitor, U.S. Department of Labor, for Respondent/Petitioner.

B e f o r e : Judge Kennedy


The captioned review-penalty proceedings are before me on the parties' motion to approve settlement of two of the three violations charged and to vacate the 104(d)(2) Order involving an alleged roof control violation.

The matters were first considered at a prehearing/settlement conference that resulted in an agreement to settle the sanding devices (Order No. 2105135) and the shelter holes (Order No. 2105163) charges at the amounts initially assessed, \$750 and \$130 respectively.

Thereafter, the roof control violation (Order No. 2104660) came on for an evidentiary hearing in Pittsburgh, Pennsylvania, on March 14, 1984. At the close of the solicitor's case, the operator moved to dismiss for failure to prove a prima facie case. For reasons best appreciated by reading the transcript,

the solicitor did not oppose. Whereupon the trial judge vacated the order and dismissed the proposal for penalty.

The premises considered, therefore, it is ORDERED that (1) the motion to approve settlement be, and hereby is, GRANTED and the contest of the shelter holes order (Docket PENN 83-225-R) DISMISSED, (2) the contest of the roof control order (Docket PENN 83-212-R) is GRANTED, and (3) the order is vacated and the proposal for the penalty thereon are DISMISSED. It is FURTHER ORDERED that the operator pay the amount of the penalty agreed upon, \$880, allocated as initially assessed, on or before Friday, August 3, 1984.



Joseph R. Kennedy  
Administrative Law Judge

Distribution:

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