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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. LAKE 85-49
A.O. No. 33-03673-03511

v.

K & R No. 1 Strip Mine

KEFFLER & ROSE ENTERPRISES,
INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Maurer

On November 14, 1985, the Secretary of Labor on behalf of the parties to this action, filed a motion to approve the settlement negotiated between them. At issue in this case are three violations, originally assessed at \$10,500 in the aggregate. Settlement is proposed at \$8,500.

Citation No. 2327906 was issued for a violation of 30 C.F.R. 77.1713(a) on June 28, 1984. On that date, a fatal accident occurred at the operator's K & R No. 1 strip mine. A laborer had been assigned the task of pumping water from the underground water holding tank. In the process of carrying out his assigned duties, he entered the tank. At a point approximately fifteen feet down the ladder into the tank, he was overcome by a lack of oxygen and fell into the water, resulting in his death. During the investigation of the accident, it was determined that had there been an adequate examination of the tank by a certified individual, it would have revealed the oxygen deficient atmosphere, and the fatal accident may have been prevented. The Solicitor represents that the operator's negligence was moderate and the gravity serious. He goes on to state that good faith was exhibited by the operator by immediate institution of a retraining program for all personnel at the mine with respect to examinations for hazards.

Citation No. 2327907 was issued for a violation of 30 C.F.R. 77.1710(g) which contributed to the same fatal accident a hereinbefore described. Two individuals, including the deceased, descended the ladder into the tank without safety belts or life lines. Use of a safety belt or life line by the deceased would have prevented his fall and might have prevented his death. The Solicitor again represents that the operator's negligence was moderate and the gravity serious.

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Citation No. 2327908 was issued for a violation of 30 C.F.R. 48.25(a) which is a training violation. The deceased miner had worked for the operator for nine weeks and had not received the formal 24 hours of training as required. The Solicitor asserts that the mine operator's negligence was high and the gravity serious.

In support of the proposed settlement, the Solicitor states that the parties have discussed the alleged violations and the six statutory criteria stated in section 110(i) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(i), and that the circumstances presented warrant the reduction in the original civil penalty assessments for the violations in question. Further, he has submitted a detailed discussion and disclosure as to the facts and circumstances surrounding the issuance of the citations and orders, as well as a full explanation and justification for the proposed reduction.

I accept the Solicitor's representations and approve the settlements.

ORDER

The operator is ordered to pay \$8,500 within 30 days of this decision.

Roy J. Maurer
Administrative Law Judge