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SOL (MSHA) V. JIM WALTER RESOURCES  
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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. SE 85-134  
A.C. No. 01-01401-03609

v.

No. 7 Mine

JIM WALTER RESOURCES, INC.,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

The Solicitor has filed a motion to approve a settlement for the two violations involved in this matter. The originally assessed amounts totalled \$2,500 and the proposed settlements are for \$1,200.

The first citation was issued for failure to make a diligent search for a fire after cutting operations. After an acetylene and oxygen torch was used to cut a belt header, employees checked for fire and found nothing. But several hours after again searching and using appropriate measuring instruments a fire was found. The Solicitor states *inter alia*, that the only evidence he has that a diligent search was not made was the failure to find the fire immediately. I have some difficulty understanding the Solicitor's representations but interpret him to be saying that the degree of diligence shown by the operator was not as great as it should have been rather than the inspector's original thought that there was no diligent search. On this basis I accept the Solicitor's representation and approve the recommended settlement of \$300.

The second citation was issued for an accumulation of combustible materials. The Solicitor states that although an accumulation admittedly existed, MSHA does not know its extent. On this basis I accept the recommended settlement which is a substantial amount and adequately reflects the described gravity of the violation.

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Accordingly, the recommended settlements are Approved and the operator is Ordered to Pay \$1,200 within 30 days from the date of this decision.

Paul Merlin  
Chief Administrative Law Judge