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SOL (MSHA) V. FRANKLIN CONSOLIDATED  
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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. WEST 85-144-M  
A.C. No. 05-00630-05519

v.

Franklin 73 Mine

FRANKLIN CONSOLIDATED  
MINES, INC.,  
RESPONDENT

DECISION

Appearances: Robert J. Lesnick, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
No appearance on behalf of Respondent.

Before: Judge Carlson

Pursuant to notice, a hearing on the merits in this civil penalty proceeding was convened on February 21, 1986, in Denver, Colorado at 10:45 a.m. No appearance was made by or on behalf of the respondent mine operator. At 10:55 a.m., counsel for the Secretary of Labor moved for an order of default affirming the citations and imposing the proposed penalties. The motion was taken under advisement and the hearing was adjourned (Tr. 4A5).

On February 21, 1986, this judge ordered respondent to show cause why a default should not be entered. The operator, in response, indicated that its former mine superintendent, who had intended to represent the company "failed to remember the date." Respondent entered the appearance of its corporate president and asked that a new hearing date be scheduled.

The default was denied and a hearing was set for April 9, 1986. Prior to that date, however, the parties notified this judge that a settlement agreement had been reached. They have now submitted a joint motion to approve a settlement agreement. The terms of the agreement provide that the respondent shall pay the \$405.00 civil penalty originally proposed by the Secretary and shall withdraw its contest to such penalty.

I conclude that the penalty should be approved in all respects.

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Accordingly, the settlement agreement is ORDERED approved and the attendant motions are granted. Respondent is ORDERED to pay to the Secretary of Labor a civil penalty of \$405.00 within 40 days of the date of this decision.

John A. Carlson  
Administrative Law Judge