

CCASE:  
CONSOLIDATION COAL V. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,  
CONTESTANT

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

CONTEST PROCEEDINGS

Docket No. WEVA 86-80-R  
Citation No. 2714701; 12//11/85

Docket No. WEVA 86-103-R  
Order No. 2566327; 1/9/86

Docket No. WEVA 85-209-R  
Citation No. 2422888; 5/30/85

Docket No. WEVA 85-210-R  
Citation No. 2422889; 5/30/85

Docket No. WEVA 85-230-R  
Order No. 2422891; 6/19/85

Docket No. WEVA 85-231-R  
Order No. 2422892; 6/19/85

Docket No. WEVA 85-232-R  
Order No. 2422893; 6/19/85

Docket No. WEVA 85-234-R  
Order No. 2423426; 6/25/85

Docket No. WEVA 85-235-R  
Order No. 2423427; 6/25/85

Buckeye Prep Plant

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

CONSOLIDATION COAL COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 85-277  
A.C. No. 46-03243-03505

Docket No. WEVA 86-237  
A.C. No. 46-03242-03506

Buckeye Prep Plant

DECISIONS APPROVING SETTLEMENTS  
AND  
ORDER OF DISMISSAL

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings concern proposals for assessment of civil penalties filed by MSHA against the Consolidation Coal Company (hereinafter Consol) pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for six alleged violations of certain mandatory safety standards found in Part 77, Title 30, Code of Federal Regulations. The contests concern Notices of Contests filed by Consol challenging the legality of three of the citations, and six section 104(b) orders which were issued for Consol's alleged failure to timely abate the citations in question. The citations and orders were issued during mine safety inspections of a refuse pile associated with the Buckeye Preparation Plant located in Stephenson, West Virginia.

These cases were scheduled for hearings in Charleston, West Virginia, during the hearing term June 17 through 19, 1986. However, by motion filed with me on June 5, 1986, pursuant to Commission Rule 30, 29 C.F.R. 2700.30, the parties seek approval of a proposed settlement of the civil penalty proceedings. Upon approval of the settlement, MSHA requests that the contests be dismissed. The citations, initial assessments, and the proposed settlement amounts are as follows:

Docket No. WEVA 85Ä277

Citation No.	Date	30 C.F.R.	Assessment	Settlement
		Section		
2022955	9/06/83	77.215(a)	\$ 78.00	\$ 78.00
2022956	9/06/83	77.215(h)	\$ 78.00	\$ 78.00
2123823	10/24/83	77.215(j)	\$ 78.00	\$ 78.00
2422888	5/30/85	75.215Ä2(c)	\$180.00	\$ 85.00
2422889	5/30/85	77.215Ä3(b)	\$180.00	\$ 85.00

Docket No. WEVA 86Ä237

Citation No.	Date	30 C.F.R.	Assessment	Settlement
		Section		
27114701	12/11/85	77.215(f)	\$395.00	\$275.00

## Discussion

In support of the proposed settlement disposition of the citations in question, MSHA's counsel has submitted a full discussion and disclosure with respect to the facts and circumstances concerning the violations, including arguments in support of the proposed reduction of the initial civil penalty assessments for three of the citations. Counsel has also provided a full discussion of the six statutory criteria found in section 110(i) of the Act.

With regard to Citation Nos. 2422888 and 2422889, MSHA's counsel states that they were issued for failure by Consol to file reports and certifications pursuant to 30 C.F.R. 77.215. Counsel asserts that these violations are of low gravity, are not significant and substantial violations, and would not, in themselves, cause injury or lost work days. Counsel concludes that the proposed settlement reductions are justified.

With regard to Citation No. 27114701, counsel states that it was issued for a violation of 30 C.F.R. 77.215(f), because an erosion gully in excess of 12 feet deep was causing refuse at the pile to shift and slide material down a hillside towards adjacent residences. However, counsel points out that the violation has been abated in that the erosion gully has been filled and the refuse rediverted away from the residences and nearby stream, and that this was accomplished after a bi-party conference and visitation to the site in February 1986. Counsel also points out that Consol has agreed to develop and submit to MSHA a schedule of a plan to permanently reclaim and rehabilitate the site. In view of Consol's good faith efforts in this regard, counsel believes that the proposed civil penalty settlement reduction is justified.

MSHA recognizes that Consol delayed the abatement of the violations because of its litigation position denying ownership and operation of the refuse pile in question. Consol's position in this regard was rejected by former Commission Judge Richard C. Steffey in his decision of March 1, 1985, in Consolidation Coal Company v. Secretary of Labor, 7 FMSHRC 322 (March 1985). On March 13, 1986, the Fourth Circuit Court of Appeals denied Consol's appeal and affirmed Judge Steffey's decision.

MSHA estimates that approximately one million dollars will be needed to properly rehabilitate the refuse pile in accordance with Federal safety standards, and it recognizes

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that available financial resources are best spent on such rehabilitation efforts and that the proposed civil penalty settlement amounts are consistent with the remedial purposes of the Act. In this regard, MSHA asserts that the violations are being abated in good faith and that Consol's history of prior violations shows no related violations.

#### Conclusion

After careful review and consideration of the pleadings and arguments made in support of the proposed settlement disposition of the civil penalty cases, I conclude and find that they are reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the settlements ARE APPROVED.

#### ORDER

Consol IS ORDERED to pay civil penalties in the settlement amounts shown above to MSHA within thirty (30) days of the date of these decisions. Upon receipt of payment, the civil penalty cases are dismissed.

Consol has filed a motion to withdraw Contest Docket No. WEVA 86Ä80ÄR, upon approval of the civil penalty which is the subject of Docket No. WEVA 86Ä237. The motion IS GRANTED, and the contest IS DISMISSED.

With regard to the remaining contest dockets, in view of the approval of the companion civil penalty Docket No. WEVA 85Ä277, I see no reason why these contests should not now be dismissed. Accordingly, the remaining contests ARE DISMISSED.

George A. Koutras  
Administrative Law Judge