

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

August 25, 1986

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. SE 86-57
Petitioner : A. C. No. 01-01247-03696
v. : No. 4 Mine
JIM WALTER RESOURCES, INC., :
Respondent :

DECISION*

Appearances: William Lawson, Esq., Office of the Solicitor,
U. S. Department of Labor, Birmingham, Alabama,
for Petitioner: R. Stanley Morrow, Esq., and
Harold D. Rice, Esq., Birmingham, Alabama, for
Respondent.

Before: Judge herlin

This case is a petition for the assessment of two civil penalties filed by the Secretary of Labor against Jim Walter Resources, Inc. It was heard as scheduled on August 5, 1986.

In accordance with their pre-hearing statements and at the hearing the parties agreed to the following stipulations:

1. the operator is the owner and operator of the subject mine;
2. the operator and the mine are subject to the provisions and jurisdiction of the Federal Mine Safety and Health Act of 1977;
3. I have jurisdiction in this case;
4. the MSHA inspector who issued the subject citations and orders was and is a duly authorized representative of the Secretary;

5. true and correct copies of the subject citations and orders were properly served upon the operator;
6. imposition of penalties will not affect the operator's ability to do business;
7. the operator is medium in size;
8. the operator's prior history of violations is average.

At the outset of the hearing the Solicitor and operator's counsel moved for approval of a settlement in the amount of \$150 for Citation No. 2604923 which had been issued for a violation of 30 C.F.R. § 75.1707 because an intake escapeway was not separated from the belt haulage entry. A two foot by four foot **thermax** block had been knocked out of the permanent stopping located behind the power center. The violation was serious but negligence was less than originally thought because the operator had had the stopping replaced once but it had fallen out again. The proposed settlement of \$150 was approved.

Citation No. 2604926 was issued for a violation of 30 C.F.R. § 75.400 because a deposit of coal dust and float dust had been allowed to accumulate in the cross-cut where the **versa-trac** charger was located on the No. 2 longwall section. Approximately 23 hours later, Order No. 2604928 was issued pursuant to section 104(b) of the Act because an inadequate effort had been made to clean up the accumulation. At the conclusion of the inspector's testimony a recess was taken after which the parties proposed a settlement based upon the following additional stipulations: the operator was negligent: there was not the requisite good faith abatement with respect to the original citation but there was good faith abatement with respect to the order; the violation **was** serious but gravity was substantially less than originally thought because there was no ignition source on the section due to a breakdown of the machinery. The proposed settlement of \$450 was approved. In view of the testimony, counsel are encouraged to acquaint their witnesses with the applicable definition of "significant and substantial" as set forth in Commission decisions.

ORDER

It is ORDERED that the operator pay \$600 within 30 days from date of this decision.



Paul Merlin
Chief Administrative Law Judge

Distribution:

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