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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. PENN 85-288
A.C. No. 36-00921-03528

v.

Penn Hill Mine

STANFORD MINING COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Maurer

On September 29, 1986, the Solicitor filed a stipulation and motion to approve settlement agreement in the above-captioned case. At issue are two section 104(a) citations originally assessed at \$10,000 each. Settlement is proposed at \$6,600 per violation.

Citation No. 2403809 was issued for a violation of 30 C.F.R. 75.200 in conjunction with Order of Withdrawal No. 240380 issued pursuant to section 107(a) when following a fatal roof fall investigation, it was determined that the roof of the active No. 4 entry of the 6 right 006 section had not been properly supported prior to continuing mining. The accident resulted in the death of section foreman Ernest E. Nichol as he attempted to install a roof bolt in this section. The accident investigation revealed that the No. 4 entry in violation of the mine's approved roof control plan had been mined approximately 12 feet in by the permanent roof supports and mining continued in the 1st open crosscut between the No. 3 and 4 entries holing and cutting back into the No. 4 entry. This resulted in an unsupported intersection approximately 30 feet long which condition led to the issuance of the imminent danger order, supra.

Citation No. 2403811 was issued in conjunction with 107(a) Order of Withdrawal No. 2403810 as a result of the same accident investigation. The investigation revealed that an imminent danger had been created when employees were proceeding in by permanent supports and the Automated Temporary Support System (ATRS) that was in use was not maintained tight against the roof after being placed. Citation 2403811 was issued for a violation of the approved roof control plan. Said plan requires, inter alia, that

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the ATRS be placed firmly against the roof and shall remain pressurized unless crib blocks or other suitable blocking material are used. The accident investigation disclosed that the victim had proceeded in by the permanent supports to manually adjust roof mats, i.e., additional supports that were placed on the extreme left ring of the ATRS. To enable the victim to adjust the mat, the ATRS was depressurized, resulting in the roof fall and fatality.

The inspector determined that the violations were caused by the high negligence of the operator resulting in a fatal occurrence. The operator showed ordinary good faith in abating these practices.

The Solicitor further asserts that the operator is currently in an impaired financial condition and that there would be an adverse impact on the operator's ability to remain in business if the proposed assessment were imposed on it. For example, in fiscal year 1985, the last for which totals are available, the operator suffered a net loss of \$1,313,723.

The Solicitor represents that the proposed assessment, as amended, is still a substantial penalty and reflects due consideration of the gravity of the violations and the operator's negligence.

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

ORDER

The operator is ordered to pay \$13,200 within 30 days of the date of this decision.

Roy J. Maurer
Administrative Law Judge