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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 86-162  
A.C. No. 36-00840-03579

v.

Cambria Slope Mine 33

BETH ENERGY MINES, INC.,  
RESPONDENT

DECISION APPROVING SETTLEMENT  
ORDER TO PAY

Before: Judge Merlin

The Solicitor has filed a motion to approve settlement of the one violation involved in this case. The originally assessed penalty was \$259. The proposed settlement is for \$125.

The Solicitor's motion discusses the violation in light of the six criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977. Order No. 2688594 was issued for violation of 30 C.F.R. 75.303(a) because the No. 1 Bleeder Room had not been examined within three hours before the start of a shift, as required by the operator's ventilation plan. The Solicitor represents that a reduction in the proposed penalty is justified because both gravity and negligence were less than was originally thought. The ventilation plan required that all active workings and all adjacent places receive preshift examinations. The Solicitor maintains that the No. 1 Bleeder Room was an "adjacent place," while the operator maintains it was not. However, the Solicitor admits that the term "adjacent place" is ambiguous. Therefore, the negligence involved was reduced. The Solicitor also represents that the No. 1 Bleeder Room had been examined four hours before the start of the shift, that no miners, equipment, methane or other hazards were present in the room. Therefore, gravity was reduced.

The representations and recommendations of the Solicitor are accepted.

Accordingly, the motion to approve settlement is GRANTED and the operator is ORDERED TO PAY \$125 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge