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SOL (MSHA) V. JIM WALTER RESOURCES  
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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

v.

JIM WALTER RESOURCES, INC.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 87-6  
A.C. No. 01-00328-03608

Bessie Mine

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

The parties have filed a joint motion to approve settlements of the three violations involved in this case. The total of the originally assessed penalties was \$357. The total of the proposed settlements is \$60.

The three citations were issued because valid respirable dust samples allegedly were not submitted by the operator. In their motion the parties state that the operator did, in fact, submit the requisite number of samples, i.e., five samples from each designated occupation. However, in each designated occupation one sample of the five contained oversized particles which could not be analyzed. The Solicitor has orally advised that the presence of an oversized particle cannot be attributed to any negligence on the operator's part. Also, the miners here wore respirators. Finally, once valid samples were submitted, the average concentrations of respirable dust in all samples were within acceptable limits. In light of the foregoing, I conclude the violations were not serious and the operator was not negligent.

The history of previous violations with respect to this medium-sized operator is average. Payment of the proposed settlements will have no effect on the operator's ability to continue in business.

The representations and recommendations of the parties are accepted.

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Accordingly, the motion to approve settlements is GRANTED and the operator is ORDERED TO PAY \$60 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge