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SOL (MSHA) V. NACCO MINING  
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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. LAKE 87-48  
A.C. No. 33-01159-03725

v.

Powhatan No. 6 Mine

NACCO MINING COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENTS

ORDER TO PAY

On June 22, 1987, the Solicitor submitted a motion for settlement of the four violations presented on the penalty petition. The originally assessed penalties totaled \$9,000 and the proposed settlements were for \$7,000. On June 26, 1987, I advised the parties by telephone that I would not approve the motion as submitted. Thereafter the parties again conferred. On June 30, 1987, the Solicitor submitted an amended motion for settlement and proposed settlements totaling \$7,500.

On July 16, 1986, MSHA conducted an investigation of a nonfatal mine accident that took place on the surface of NACCO's Powhatan No. 6 Mine on July 15, 1986. The investigation reported that at approximately 2:55 p.m. a road grader, while ascending the roadway, drifted backwards gaining speed as it descended the roadway. The grader overturned and injured the man who was running it. The subject citations arise from this incident.

Citation No. 2824598 was issued for a violation of 30 C.F.R. 77.403a(c)(1) because the grader did not have a rollover protective structure ("ROPS"). The Solicitor advises that although the lack of a ROPS was a violation of the cited standard, it was not a cause of the accident. The absence of a ROPS did not cause the grader to roll backwards. The existence of the ROPS might possibly have reduced the gravity of the injury, but in and of itself, did not contribute to the occurrence of the incident. Moreover, the grader was equipped with a substantial enclosed metal cab. The cab, however, did not rise to the level of being a ROPS. Finally, the grader had existed in this condition on the mine property for fifteen years without prior incident and without being cited by MSHA. Based upon the foregoing, gravity and negligence are somewhat less than originally thought. The

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original assessment was \$2,500 and the proposed settlement is \$2,000. I approve the settlement which is a substantial amount.

Citation No. 2824599 was issued for a violation of 30 C.F.R. 77.1605(k) because on the roadway where the accident occurred berms or guards were not provided. However, the MSHA inspector determined that the lack of berms or guards had no causal relationship to the accident. The grader rolled off on the right side of the road where berms were missing, not the left side. Furthermore, the 31 feet cited on the right was far removed from the accident site. The original assessment was \$1,000 and the proposed settlement is \$300. In light of the particular circumstances, set forth herein, I approve the recommended settlement.

Citation No. 2824600 was issued for a violation of 30 C.F.R. 77.1710(i) because suitable seat belts had not been provided in the cab of the road grader. MSHA determined that the inadequacy of the seat belt did not cause the accident nor its severity. The Solicitor explained the method in which the grader is operated as follows:

The use of the grader often requires that the operator stand up to view the area on either side of the grader and to observe the operation of the grader's blade beneath him. In this method of operation, the standard type of seat belt cannot be engaged. To compensate for the operational necessity of standing and to overcome the inadequacy of the standard seat belt in this situation, the operator is attempting to obtain and install seat harnesses that will allow attachment while standing.

It does not appear that MSHA ever has required the operator to have a seat harness other than the standard belt. The original assessment was \$500 and the proposed settlement is \$200. In light of the particular circumstances, set forth herein, I approve the recommended settlement.

Citation No. 2827922 was issued for a violation of 30 C.F.R. 77.1605(b) because the grader had inadequate brakes. Repair work done on the braking system, the previous Saturday, resulted in the plugging of one of the hydraulic brakelines. Based on this, it was concluded that the brakes were inadequate and this inadequacy was the cause of the aforementioned accident. The original assessment was \$5,000 and this is the proposed settlement. The Solicitor puts forward several mitigating factors, none of which I find persuasive. The Solicitor also states why the operator

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believes that if the brakes had been applied properly under the stalled engine conditions, the grader would have held. I also reject this proposition as based upon a series of unfounded assumptions. I approve the recommended settlement, however, which is a substantial amount because it accords with the high degree of gravity and negligence presented.

The foregoing settlements also have taken into account and are based upon the Solicitor's representations regarding the other statutory criteria under section 110(i) of the Act.

In light of the foregoing the recommended settlements are APPROVED and the operator is ORDERED TO PAY \$7,500 within 30 days from the date of this decision.

Paul Merlin  
Chief Administrative Law Judge