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SOL (MSHA) V. FLORENCE 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. PENN 87-128
A.C. No. 36-02448-03591

v.

Florence No. 2 Mine

THE FLORENCE MINING COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

This is a civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977 (Act). On June 22, 1987 the Solicitor submitted a motion to approve settlements for the four violations involved in this case. The originally assessed amounts totaled \$3,500 and the proposed settlements were for \$2,250.

On July 24, 1987, I informed the parties that the proposed settlements for two of the orders, numbers 2695242 and 2695244, did not satisfy the statutory criteria set forth in section 110(i) of the Act. Accordingly, the parties were informed that the June 22, 1987 motion would not be approved as submitted. The parties agreed to re-negotiate the proposed settlement amounts, and submit an amended motion to approve settlement.

On August 6, 1987, the parties submitted an amended motion which proposed a settlement in the amount of \$2,500. After review of this motion, I am satisfied that the recommended findings and conclusions set forth therein are in accordance with the record and that the settlement amount satisfies the requirements of the Act.

The Solicitor's motion discusses each violation in light of the six statutory criteria set forth in section 110(i) of the Federal Mine and Health Act of 1977. Order No. 2695141 was issued for a violation of 30 C.F.R. 75.400 because

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loose coal and coal dust had accumulated in the No. 17 room of the mine. This penalty was originally assessed at \$800 and the proposed settlement is for \$600. The Solicitor represents that a reduction from the original assessment is warranted for three reasons. First, the primary accumulation developed as a result of a coal spillage stemming from the connection of two cross cuts. Thus, the hazard associated with the accumulation did not exist for a long period of time. Second, the machinery in the area of the accumulation satisfied permissibility standards. Thus, no ignition source was present. Third, only two people, as opposed to six cited by the inspector, could have been affected by the adverse condition. I accept the Solicitor's representations and approve the recommended settlement which remains a substantial amount.

Order No. 2695160 was issued for a violation of 30 C.F.R. 75.400 because there was an accumulation of loose coal and float dust in the No. 2 main belt entry. The accumulation ranged from a light dusting to eighteen inches in depth. The inspector observed three areas of accumulation around the air locks, belt drives and inby the 4 West overcast. This violation was originally assessed at \$900 and the proposed settlement is for \$600. The Solicitor represents that a reduction from the original assessment is warranted because no ignition sources were present in any of the cited areas. In addition, the belt drives are monitored by heat activated sensors and are protected by a deluge type sprinkler system. I accept the Solicitor's representations and approve the recommended settlement which remains a substantial amount.

Order No. 2695242 was issued for a violation of 30 C.F.R. 75.302(a) because the No. 3 and No. 4 rooms in the 1 South East working section were not adequately ventilated. This penalty was originally assessed at \$800 and the proposed settlement is for \$600. The Solicitor represents that a reduction from the original assessment is warranted because the affected areas were inactive. The Solicitor further represents that upon notification of the ventilation problem, the operator promptly installed six check curtains to direct the air current towards the working face. I accept the Solicitor's representations and approve the recommended settlement.

Order No. 2695244 was issued for a violation of 30 C.F.R. 75.400 because coal dirt and loose float coal dust had accumulated in the No. 1 belt entry. The accumulation ranged from a light dusting to 12 inches in depth. This penalty was originally assessed at \$1,000 and the proposed settlement is for \$700. The Solicitor represents that a reduction from the original assessment is warranted because

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no ignition sources were present in any of the cited areas. In addition, the belt drives are monitored by heat activated sensors and are protected by a deluge sprinkler system. The settlement motion also notes that no individuals were scheduled to work at the cited area during the shift. These factors reduce the likelihood and severity of the hazard. I accept the Solicitor's representations and approve the recommended settlement.

Accordingly, the motion to approve settlement is GRANTED and the operator is ORDERED TO PAY \$2,500 within 30 days from the date of this decision.

Paul Merlin
Chief Administrative Law Judge