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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. WEVA 87-66  
A.C. No. 46-01433-03736

v.

Loveridge No. 22 Mine

CONSOLIDATION COAL COMPANY,  
RESPONDENT

CONSOLIDATION COAL COMPANY,  
CONTESTANT

CONTEST PROCEEDING

v.

Docket No. WEVA 87-8-R  
Order No. 2841392; 9/9/86

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

Loveridge No. 22 Mine

DECISION  
and  
ORDER OF DISMISSAL

Appearances: Therese I. Salus, Esq., Office of the  
Solicitor, U.S. Department of Labor,  
Philadelphia, Pennsylvania, for the  
Petitioner/Respondent;  
Michael R. Peelish, Esq., Consolidation  
Coal Company, Pittsburgh, Pennsylvania,  
for the Respondent/Contestant.

Before: Judge Koutras

Statement of the Proceedings

The captioned civil penalty proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of \$750 for an alleged violation of mandatory safety standard 30 C.F.R. 75.400, as stated in a section 104(d)(2) "S & S" Order No. 2841392 served on the respondent on September 9, 1986. The order was issued after the inspector observed accumulations of float coal dust on the mine

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floor along a conveyor belt haulage entry. The companion contest proceeding concerns Consolidation Coal's challenge to the legality of the order.

The respondent/contestant filed a timely answer and contest, and the cases were consolidated for hearing with several other cases in Morgantown, West Virginia, during the hearing term August 25-26, 1987. However, when the cases were called for trial, the parties advised me that they had reached a settlement in the civil penalty case, and that upon approval of the settlement, the contestant will withdraw its contest. Under the circumstances, the parties were afforded an opportunity to present oral arguments on the record in support of their proposed settlement (Tr. 3-8). The proposed settlement was approved from the bench, and my decision in this regard is herein re-affirmed.

#### Discussion

In support of the proposed settlement of the civil penalty case, the parties presented information pertaining to the six statutory criteria found in section 110(i) of the Act. They also discussed and disclosed the facts and circumstances with respect to the issuance of the violation, and a reasonable justification for a reduction of the original proposed civil penalty assessment. The proposed settlement requires the respondent to pay a civil penalty assessment of \$450 for the contested violation in question.

#### Conclusion

After careful review of the pleadings filed by the parties, and upon consideration of the arguments made in support of the proposed settlement of the civil penalty case, I conclude and find that the settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the settlement is APPROVED.

#### ORDER

Respondent IS ORDERED to pay a civil penalty assessment in the amount of \$450 in satisfaction of the violation in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, the civil penalty proceeding is dismissed. In view of the settlement disposition of the civil penalty case, contestant's request to withdraw its contest IS GRANTED, and it IS DISMISSED.

George A. Koutras  
Administrative Law Judge