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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. SE 87-91
A.C. No. 01-00328-03623

v.

Bessie Mine

JIM WALTER RESOURCES, INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

The parties have filed a joint motion to approve settlements of the two violations involved in this case. The total of the originally assessed penalties was \$272 and the total of the proposed settlements is \$40.

The motion discusses the violations in light of the six statutory criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977. The subject citations were issued for violations of respirable dust standards. 30 C.F.R. 70.100(a). Both violations were designated as significant and substantial on the citations. The parties represent that a reduction from the original assessment is warranted because the employees who were working in the designated occupation were wearing personal protective equipment in the form of respirators. The parties further represent that MSHA will modify the subject citations to delete the significant and substantial characterization.

The rationale of the proposed settlements is justified by Commission precedent. Under Consolidation Coal Company, 8 FMSHRC 890 (1986), aff'd, 824 F.2d 1071 (D.C.Cir.1987), a rebuttable presumption exists that all respirable dust violations are significant and substantial. However this presumption may be rebutted by establishing that miners in the designated occupation were not exposed to the hazard posed by the excessive concentration of respirable dust. The Commission specifically noted that the use of personal protective equipment would satisfy this evidentiary requirement. Based upon the representations of the parties, this appears to be a case where the presumption is rebutted.

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In light of the fact that the miners in this case were wearing personal protective equipment, I find the violations were nonserious and approve the proposed settlements. Accordingly, the motion to approve settlements is GRANTED and the operator is ORDERED TO PAY \$40 within 30 days from the date of this decision.

Paul Merlin
Chief Administrative Law Judge