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SOL (MSHA) V. HIGHWIRE INC.  
DDATE:  
19871023  
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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 PROCEEDINGS  Docket No. KENT 87-95 A.C. No. 15-15684-03508
v.	Docket No. KENT 87-156 A.C. No. 15-15684-03509
HIGHWIRE, INCORPORATED, RESPONDENT	No. 1 Mine

DECISIONS

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for the Petitioner;  
Eugene C. Rice, Esq., Paintsville, Kentucky,  
for the Respondent.

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern proposals for assessment of civil penalties 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 civil penalty assessments for eight alleged violations of certain mandatory safety standards found in Part 77, Title 30, Code of Federal Regulations.

These cases were among eight cases scheduled for hearing in Paintsville, Kentucky, during the hearing term September 22-23, 1987. When the cases were called for trial, counsel for the parties advised me that the parties agreed to a proposed settlement of the cases, and they were afforded an opportunity to present their proposals on the record pursuant to Commission Rule 30, 29 C.F.R. 2700.30. The citations, proposed assessments, and the settlement amounts are as follows:

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Citation No.	Date	30 C.F.R. Section	Assessments	Settlements
2784217	11/13/86	77.404(a)	63	63
2784219	11/13/86	77.410	63	63
			\$126	\$126

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Citation No.	Date	30 C.F.R. Section	Assessments	Settlements
2780392	03/04/87	77.1605(b)	85	85

2780393	03/04/87	77.1606(c)	85	85
2780394	03/04/87	77.410	85	85
2780395	03/04/87	77.410	85	85
2780396	3/05/87	77.1606(c)	20	20
2780397	03/05/87	77.1606(c)	20	20
			\$380	\$380

Discussion

In support of the proposed settlement of these cases, the parties presented information with respect to the six statutory civil penalty assessment criteria found in section 110(i) of the Act. The parties incorporated by reference certain stipulations entered into in the prior proceedings conducted on September 22, 1987, and they are as follows:

1. The respondent is subject to the Act.
2. The respondent is a small-to-medium sized operator engaged in auger and strip coal mining activities. During the period November, 1986 through March, 1987, the respondent employed approximately 25-45 employees, with an annual coal production of 241,616 tons.
3. Respondent's history of prior violations for the period July 1, 1986 through March 4, 1987, reflects that the respondent paid civil penalty assessments for 36 violations, all of which were issued as section 104(a) citations.
4. All of the citations in question were timely abated by the respondent in good faith.

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5. Payment of the proposed civil penalty assessments will not adversely affect the respondent's ability to continue in business.

I take note of the fact that the respondent has agreed to make payment for the full amount of the proposed civil penalty assessments for the violations in question. I note further that the inspectors who issued the citations were present in the court room, and petitioner's counsel asserted that he discussed all of the violations with the inspector's and that they concurred in the proposed settlement dispositions advanced by the parties.

#### Conclusion

Upon careful review and consideration of the pleadings, and the information furnished by the parties in support of the proposed settlement of these cases, I conclude and find that they are reasonable and in the public interest and should be approved. Accordingly, pursuant to 29 C.F.R. 2700.30, the settlements ARE APPROVED.

#### ORDER

The respondent IS ORDERED to pay civil penalty assessments in the settlement amounts shown above in satisfaction of the violations in question within thirty (30) days of the date of these decisions. Upon receipt of payment by the petitioner, these proceedings are dismissed.

George A. Koutras  
Administrative Law Judge