

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

May 17, 1989

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 88-290
Petitioner	:	A. C. No. 42-01697-03589
	:	
v.	:	Bear Canyon No. 1 Mine
	:	
C. W. MINING COMPANY,	:	

ORDER OF PARTIAL SETTLEMENT
ORDER OF PARTIAL DEFAULT
ORDER TO PAY

Before: Judge Merlin

The Solicitor has filed a partial motion to approve settlement for two of the three violations involved in this case.

Citation No..3075965 was issued for a violation of 30 C.F.R. § 75.1725(a) because a belt control switch was not being maintained to act as a positive stop control for the belt. The penalty was originally assessed at \$192 and the proposed settlement is for \$134. Citation No. 3224163 was issued for a violation of 30 C.F.R. § 75.220 because the approved roof control plan was not being complied with. The penalty was originally assessed at \$294 and the proposed settlement is for \$206. I have reviewed these violations in light of the six statutory criteria set forth in section 110(i) of the Act, 30 U.S.C. § 820(i), and find that the proposed settlements may be approved as being in accordance with the provisions of the Act.

The remaining violation, Order No. 3227164, was issued for a violation of 30 C.F.R. § 75.303(a) because an adequate preshift examination was not made of an area in the lower seam section in that observable hazards which existed were not listed in the approved 'book. The penalty is assessed at \$700. On January 9, 1989, the operator was ordered to file an Answer for this violation or show cause for not doing so, The file contains the return receipt showing that the operator received a copy of the show cause order on January 14, 1989. However, the operator failed to comply with it. As a result, judgment by default must be entered in favor of the Secretary.

It is therefore, **ORDERED** that the partial settlement motion for Citation Nos. 3075965 and 3224163 be APPROVED and the operator is **ORDERED TO PAY** \$340.

It is further ORDERED that judgment by default shall be entered in favor of the Secretary for Order No. 3227164 and as a result the operator is **ORDERED** TO PAY \$700.

Finally, it is ORDERED that the operator pay \$1,040 within 30 days from the date of this decision.

A handwritten signature in black ink that reads "Paul Merlin". The signature is written in a cursive, flowing style with a large initial "P" and "M".

Paul Merlin
Chief Administrative Law Judge

Distribution:

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