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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 89-22
A.C. No. 46-01453-03831

v.

Humphrey No. 7 Mine

CONSOLIDATION COAL COMPANY
RESPONDENT

Docket No. WEVA 89-24
A.C. No. 46-01968-03782

Blacksville No. 2 Mine

AND

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

CIVIL PENALTY PROCEEDING

Docket No. WEVA 89-39
A.C. No. 46-01437-03643

v.

McElroy Mine

MCELROY COAL COMPANY,
RESPONDENT

DECISION

Appearances: Page H. Jackson, Esq., Robert S. Wilson, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Arlington, Virginia, for the Petitioner;
Michael R. Peelish, Esq., Consolidation Coal Co.,
Pittsburgh, Pennsylvania, for the Respondents.

Before: Judge Maurer

These cases are before me upon petitions for assessment of
civil penalty under Section 105(d) of the Federal Mine Safety and
Health Act of 1977, 30 U.S.C. 801, et seq., (the Act).

Pursuant to notice, a hearing was commenced in Morgantown,
West Virginia on April 18, 1989. At that hearing, prior to the
taking of any testimony, the parties proposed a settlement
agreement. The petitioner proposed reducing the specially
assessed penalty for Order No. 3113502 from \$1000 to \$800 based
on a reduced likelihood of occurrence upon re-examination of the
factual circumstances surrounding the violation. I approved that
motion at the hearing and that disposed of Docket No. WEVA 89-22.
In Docket No. WEVA 89-24, I approved a reduction in the aggregate

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civil penalty from \$412 to \$256 for two 104(a) citations, one of which was changed from significant and substantial (S&S) to non-S&S. In Docket No. WEVA 89-39, Order No. 2943749 was modified to a citation issued pursuant to 104(a) of the Act and the civil penalty proposal reduced from \$900 to \$300. Petitioner also proposed reducing the specially assessed penalty for 104(d)(2) Order No. 3106822 from \$1000 to \$800 based on a reduction in the number of persons affected by the violation. The respondent has agreed to pay these amounts in full settlement of the cases. I have considered these matters in that light and under the criteria for civil penalties contained in 110(i) of the Act and I conclude that the proffered settlements are appropriate.

Pursuant to the Rules of Practice before this Commission, this written decision confirms the bench decision I rendered at the hearing, approving the settlements.

WHEREFORE IT IS ORDERED that respondent shall pay the approved civil penalty of \$2156 within 30 days of this decision and upon such payment, these proceedings ARE DISMISSED.

Roy J. Maurer
Administrative Law Judge