

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 10, 1990

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 90-40
Petitioner	:	A. C. No. 36-04852-03698
	:	
v.	:	Urling No. 1 Mine
KEYSTONE COAL MINING	:	
CORPORATION,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

The Solicitor has filed a motion to approve settlement of the three violations involved in this case. The originally assessed penalty was \$3,700 and the proposed settlement is \$2,250. The Solicitor 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.

Order No. 3300139 was issued as a 104(d)(2) order for a violation of 30 C.F.R. § 75.400 because coal was being dumped along with gobbled rock in the No. 2 entry. The originally assessed penalty was \$1,200 and the proposed settlement is \$750. Order No. 3088570 was issued as a 104(d)(2) order for a violation of 30 C.F.R. § 75.400 because combustible materials were permitted to accumulate in the 10 east working section. The originally assessed penalty was \$1,300 and the proposed settlement is \$750. Order No. 3088575 was issued as a 104(d)(2) order for a violation of 30 C.F.R. § 75.400 because loose coal and coal dust, combined with gobbled materials, were permitted to accumulate or be stored in the crosscuts left and right off the No. 2 entry of the 5 east section. The originally assessed penalty was \$1,200 and the proposed settlement is \$750.

The Solicitor represents that the reductions are warranted because negligence and gravity were less than originally thought. According to the Solicitor, the operator has encountered mining conditions which have caused difficulty in the removal of gobbled materials, such as rock and slate, from the coal being produced. The operator sought assistance from MSHA in determining an appropriate method to handle the gobbled materials which could contain some coal, and MSHA provided information concerning control of this material. The operator believed that MSHA had accepted the rock dusting method it used to render gob materials inert. However, the Solicitor advises that the subject violations involved coal accumulations combined with the gobbled

materials and that MSHA has consistently distinguished coal accumulations from **gobbed** materials and that accumulations must be removed from the mine. The parties agree that the subject orders do indeed properly cite violations of the named standard. In addition, the finding of unwarrantable failure remains unchanged so that the recommended settlement amounts remain substantial.

In addition, the Solicitor avers that although negligence remains high it was somewhat mitigated because the operator misunderstood what was required. I have difficulty in understanding the Solicitor's negligence argument. However, since the parties are in agreement, I will let the unwarrantable finding stand. I do accept the Solicitor's statement that although gravity is high, the degree of gravity was mitigated because the **gobbed** materials were rock dusted. Finally, I note the solicitor's representations that the reductions are justified because the operator demonstrated a high degree of good faith in resolving these violations. Thus, the operator immediately removed the accumulations and is in the process of renovating its cleaning plant so that the **excessive rock** and slate problems which led to the issuance of orders will not recur. Both actions have required great expense.

Based upon the foregoing, I find that the proposed settlements are appropriate and approve them.

Accordingly, it is ORDERED that the proposed settlements be APPROVED and the operator **PAY \$2,250** within 30 days of the date of this decision.



Paul Merlin
Chief Administrative Law Judge

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