

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 15, 1991

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 90-303
Petitioner	:	A. C. No. 46-01452-03746
	:	
v.	:	Blacksville No. 1 Mine
	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Merlin

The Solicitor has filed a motion to approve settlement of the two violations involved in this case. The originally assessed penalty was \$384 and the proposed settlement is \$200. 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.

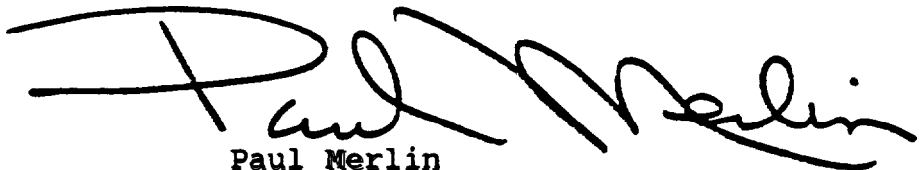
Citation No. 3314744 was issued for a violation of 30 C.F.R. § 75.316. The approved ventilation plan was not being complied with at the 9 north and 10 north air course regulators because the wooden portions of the regulators had not been painted with fire resistant material. The proposed settlement would modify the citation to reflect that the violation was not significant and substantial. The originally assessed penalty was \$192 and the proposed settlement is \$100. The Solicitor represents that the reduction and modification are warranted because gravity was not as severe as had been first estimated. According to the Solicitor, the regulators in question were not located near any ignition source and were not likely to be exposed to flame or excessive heat except during a significant mine fire or explosion. In addition, there were no conditions in the mine at the locations of the regulators to suggest that such an event was likely to occur. I accept the Solicitor's representations and based upon them find that gravity was less than originally thought. Accordingly, I approve the recommended settlement and find that the citation should be modified as requested.

Citation No. 3314753 was issued for a violation of 30 C.F.R. § 75.316. The approved ventilation plan was not being complied with because one hundred eighty feet of energized power cable for the muck pump located at the No. 2 conveyor belt transfer was not support on well-insulated insulators. The inspector noted that the cable was lying on the damp pavement and that insulators had

not been installed. The proposed settlement would modify the citation to reflect that the violation was not significant and substantial. The originally assessed penalty was \$192 and the proposed settlement is \$100. The Solicitor represents that the reduction and modification are warranted because gravity was not as severe as had been originally thought. According to the Solicitor, the power cable was not usually handled or touched by miners and was in good shape. Moreover, the cable was fully protected by an undamaged outer jacket of hard rubber material. I accept the Solicitor's representations and based upon them find that gravity was less than originally thought. Accordingly, I approve the recommended settlement and the citation should be modified as requested.

Accordingly, it is ORDERED that Citation Nos. 3314744 and 3314753 be MODIFIED to delete the significant and substantial designations.

It is further ORDERED that the proposed settlement be APPROVED and the operator PAY \$200 within 30 days of the date of this decision.



Paul Merlin
Chief Administrative Law Judge

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