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ARCH OF KENTUCKY v. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

ARCH OF KENTUCKY, INC.,  
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. KENT 91-16-R  
Order No. 3384076; 9/13/90

No. 37 Mine  
Mine ID 15-04670

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

v.

ARCH OF KENTUCKY, INCORPORATED,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 91-167  
A.C. No. 15-04670-03634

No. 37 Mine

DECISIONS

Appearances: Mary Sue Taylor, Office of the Solicitor, U.S.  
Department of Labor, Nashville, Tennessee, for the  
Respondent/Petitioner;  
Marco M. Rajkovich, Esq., Wyatt, Tarrant & Combs,  
Lexington, Kentucky, for the Contestant/Respondent

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings concern a proposal for assessment of civil penalty filed by the Secretary of Labor (MSHA), against the respondent mine operator (Arch of Kentucky, Inc., hereafter referred to as Arch), pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of \$1,000, for an alleged violation of mandatory safety standard 30 C.F.R. 75.316 (Docket No. KENT 91-167). Docket No. KENT 91-16-R, concerns a Notice of Contest filed by Arch challenging the legality and propriety of the violation.

The contested citation and order were consolidated for hearing in Pikeville, Kentucky, and the parties appeared and presented testimony and evidence with respect to the alleged violation. Subsequently, the parties informed me that they

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settled the cases, and they filed a joint motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of the proposed settlements.

#### Stipulations

The parties stipulated in relevant part as follows (Tr. 5-6):

1. The contestant/respondent is a large mine operator.
2. The contestant/respondent is subject to the jurisdiction of the Act and the presiding administrative law judge.
3. Payment of the proposed civil penalty assessment will not adversely affect the respondent's ability to continue in business.
4. The mine ventilation plan required 38,000 cubic feet of air per minute on the longwall face on September 13, 1990, and it also mentions other air quantities. The plan did not specify a location for taking face air readings.

#### Discussion

The alleged violation of mandatory safety standard 30 C.F.R. 75.316, is stated as follows in the initial section 104(d)(1) Order No. 3384076, issued by MSHA Inspector James W. Poynter on September 13, 1990:

The approved ventilation and methane and dust control plan was not being fully complied with on the G-2 (004) longwall section. An air measurement taken with a calibrated anemometer, at the No. 66 shield, indicated that 29,858 cfm of air was coursing across the longwall face. The approved plan stipulated that 38,000 cfm of air will be maintained on the longwall face.

In the course of the hearing, MSHA's counsel stated that the contested order was subsequently modified to a section 104(d)(1) citation (Tr. 10-11). As a result of the settlement discussions by the parties following the hearing, the citation has been further modified to a section 104(a) citation, with special significant and substantial (S&S) findings. Further, the proposed civil penalty assessment of \$1,000, has been reduced to an assessment of \$500, which Arch has agreed to pay.

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In support of their proposed settlement, the parties have submitted additional information with respect to negligence and gravity, and I take note of the fact that abatement was achieved within approximately one hour when the air current across the longwall face was increased to 38,768 cfm of air. The record reflects that the decreased air on the section was caused by a blockage of the tailgate area by a piece of rock. The parties agree that the mine had some problems with rock falls in the tailgate area, and that the foreman discussed the decreased air situation with his crew and that they all agreed that in their opinion the safest way to remove the rock was to take additional cuts of coal along the longwall face. Under these mitigating circumstances, the parties further agree that the unwarrantable failure notice should be modified to a section 104(a) citation.

#### Conclusion

After careful review of the entire record in this case, including the posthearing arguments submitted by the parties in support of the proposed settlement, I conclude and find that the settlement is reasonable and in the public interest. Accordingly, IT IS APPROVED.

#### ORDER

##### IT IS ORDERED THAT:

1. Docket No. KENT 91-167. The modified section 104(a) "S&S" Citation No. 3384076, September 13, 1990, charging a violation of mandatory safety standard 30 C.F.R. 75.316, IS AFFIRMED.

The respondent Arch of Kentucky, Inc., IS ORDERED to pay a civil penalty assessment of \$500 for the violation, and payment shall be made to MSHA within (30) days of the date of this decision and order. Upon receipt of payment, this matter is dismissed.

2. Docket No. KENT 91-16-R. In view of the approved settlement of the civil penalty case, the contest filed by Arch of Kentucky, Inc., is deemed to be withdrawn, and IT IS DISMISSED.

George A. Koutras  
Administrative Law Judge