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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. PENN 91-160  
A.C. No. 36-01892-03515

v.

Porter Tunnel  
Docket No. PENN 91-1349

KOCHER COAL COMPANY,  
RESPONDENT

A.C. No. 36-01891-03505  
Kocher Breaker

Docket No. PENN 91-1032  
A.C. No. 36-03304-03501

Lincoln Stripping Mine

DECISION APPROVING SETTLEMENT

Appearances: Joseph T. Crawford, Esq., Anthony G. O'Malley, Jr., Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for the Petitioner; Allen Shaffer, Esq., Millersburg, Pennsylvania, and Mr. Steven D. Shrawder, Valley View, Pennsylvania, for the Respondent.

Before: Judge Melick

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 (the Act). Petitioner's initial motions to approve settlement agreements were denied. At hearings, amended motions were filed and supportive evidence submitted. In particular with respect to Citation No. 2934266, charging Respondent with failing to notify the Secretary that it had reopened a mine, the proposed penalty in settlement of \$20 can now be approved. There is a reasonable question as to whether, in its reclamation work, Respondent was engaged in activity subject to MSHA inspection authority.

A reduction in penalty from \$1221.00 to \$665.50 has now been proposed with respect to the remaining citations. I have

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considered the representations and documentation submitted in these cases, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that Respondent pay a penalty of \$685.50 within 30 days of this order.

Gary Melick  
Administrative Law Judge