

CCASE:
SOL (MSHA) v. HICKORY COAL
DDATE:
19920710
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 SKYLINE, 10TH FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

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

v.
HICKORY COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDINGS
Docket No. PENN 92-16
A. C. No. 36-07783-03523

Docket No. PENN 92-171
A. C. No. 36-07783-03524

Docket No. PENN 92-172
A. C. No. 36-07783-03525

Docket No. PENN 92-304
A. C. No. 36-07783-03526

Slope No. 1 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 Secretary;
Mr. William Kutsey, Hickory Coal Company, for
Respondent.

Before: Judge Maurer

At the hearing of these cases, which was held on June 17,
1992, in Jenkintown, Pennsylvania, the parties jointly moved for
approval of a settlement after the testimony of the first two
government witnesses.

Docket No. PENN 92-16 involves a single section 104(d)(1)
citation, Citation No. 2933291. The parties requested a 50
percent reduction in the \$400 assessed penalty based on the
respondent's limited ability to pay and the current nonproducing
character of the mine.

Docket No. PENN 92-171 contains three section 104(a)
citations assessed at a total amount of \$162. Settlement is
proposed to reduce the penalty for Citation No. 2933297 from \$20
to \$12; and Citation Nos. 2934879 and 3079884 by 50 percent to
\$71. The same rationale for the settlement reductions prevails
throughout this decision.

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Docket No. PENN 92-172 involves five section 104(a)-104(b) citations. It is proposed to reduce Citation Nos. 2934803 and 3079392 from \$140 to \$84, respectively. With regard to Citation Nos. 2933292, 2934801, and 3079391, a 50 percent reduction to \$245 is proposed.

Lastly, Docket No. PENN 92-304 contains a single section 104(a) citation. It is proposed to reduce the assessment thereon from \$750 to \$334.

This leaves the respondent with a total civil penalty to pay of \$1030. It is proposed that the initial \$180 be paid within 90 days of the date of this decision, while the remaining \$850 may be paid in \$50 monthly installments, beginning no later than 90 days after the date of this decision.

Furthermore, there are nonmonetary aspects of the settlement agreement. Mr. Kutsey has agreed that on the day that he intends to reopen his mine, he will contact MSHA's Pottsville office. At that time, MSHA inspectors will accompany Mr. Kutsey in an inspection of his mine. Any citations that are issued will not, however, be assessed. Abatement will be required, of course. In addition, any outstanding section 104(b) orders pertaining to this mine will be fully abated before coal is mined. Finally, Mr. Kutsey has agreed that he will not impede the MSHA inspection of his mine in any way, forever.

I granted this motion on the record at the hearing as I do believe that the proffered settlement, in toto, is appropriate under the criteria set forth in section 110(i) of the Act and in the best interest of both the parties to these cases and the public.

ORDER

It is hereby ORDERED that:

1. Citation Nos. 2933291, 2933297, 2934879, 3079884, 2934803, 3079392, 2933292, 2934801, 3079391, and 2934258 ARE AFFIRMED.

2. Respondent, Hickory Coal Company, IS ORDERED TO PAY civil penalties in the total amount of \$1030. Of that amount, \$180 is due within 90 days of the date of this decision. The remaining \$850 will be paid in \$50 monthly installments also beginning within 90 days of the date of this decision, and continuing for 17 months or until paid in full.

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3. Respondent shall also fully comply with all the nonmonetary aspects of the settlement agreement approved herein as more fully set out earlier in this decision.

Roy J. Maurer
Administrative Law Judge