

CCASE:
MSHA V. TEN-A COAL
DDATE:
19921223
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 89-274
Petitioner	:	A. C. No. 46-05682-03505
v.	:	
	:	Ward Mine
TEN-A COAL COMPANY,	:	
Respondent,	:	

DECISION UPON REMAND APPROVING SETTLEMENT

Before: Judge Maurer

On May 3, 1990, I rendered a decision affirming section 104(d)(1) Citation No. 2944253 in its entirety and assessed a \$400 civil penalty. That portion of this case was not appealed and was not affected by the subsequent Commission decision and the operator has agreed to pay that \$400 as part of the instant settlement negotiation. The crux of the Secretary's appeal of my decision in this case and the subsequent Commission decision in Ten-A Coal Co., 14 FMSHRC 1296 (August 1992) dealt with my modification of section 104(d)(1) Order No. 2944252 to a section 104(a) citation. The Commission reversed that portion of my decision and remanded this matter to me for further proceedings.

Subsequently, the parties have proposed to settle this remaining portion of the case by reinstating the section 104(d)(1) Order and assessing a \$300 civil penalty vice the \$400 penalty originally proposed by the Secretary. I have reconsidered the entire record in this case and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Mine Act.

WHEREFORE, the motion for approval of settlement is GRANTED.

ORDER

1. Section 104(d)(1) Citation No. 2944253 and section 104(d)(1) Order No. 2944252 ARE AFFIRMED.

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2. Ten-A Coal Company is ordered to pay the sum of \$700 within 30 days of the date of this decision.

Roy J. Maurer
Administrative Law Judge

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