

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL
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SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 92-1054
Petitioner	:	A. C. No. 46-01455-03902
	:	
v.	:	
	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	Osage No. 3

DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Merlin

The above-captioned case was the subject of an extensive conference call between the undersigned and the parties on February 1, 1993. On February 5, 1993, the Solicitor filed a motion to approve settlement of the six violations involved in this case. The originally assessed penalties were \$1,725 and the proposed settlements are for \$1,052.

The Solicitor advises that the operator has agreed to pay the originally assessed penalties for five of the violations, Citation Nos. 3718022, 3718025, 3718184, 3718185, and 3718186. The Solicitor requests that Order No. 3718027, be modified from a 104(d)(2) order to a 104(a) citation and the penalty reduced from \$851 to \$178. The Solicitor advises that the degree of fault was not as high as originally thought. The cited combustible materials were not immediately removed so as to accomplish abatement because the miner on the section had been assigned to abate another more serious violation. Therefore, although the operator was at fault its conduct cannot be characterized as "aggravated" as that term has been interpreted and applied by the Commission to establish unwarrantable failure. Westmoreland Coal Co., 7 FMSHRC 1338 (Sept. 1985); Emery Mining Corp., 9 FMSHRC 1997 (Dec. 1987). The agreed upon settlement reached at the February 1 conference call, wherein the reasons for the modification and reduction were discussed, was approved by the undersigned.

I have considered the representations and documentation submitted in this case along with the discussions on February 1, and I conclude that the proffered settlements are appropriate under the criteria set forth in section 110(i) of the Act.

In light of the foregoing, the motion for approval of settlements is GRANTED.

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It is ORDERED that Order No. 3718027 be MODIFIED from a 104(d)(2) order to a 104(a) citation and to reduce negligence from high to moderate.

It is further ORDERED that the operator pay a penalty of \$1,052 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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