

CCASE:
SOL (MSHA) V. MAPLE MEADOW MINING
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 92-1025
Petitioner : A.C. No. 46-03374-03732
v. :
: Maple Meadow Mine
MAPLE MEADOW MINING COMPANY, :
Respondent :

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding filed by the petitioner against the respondent 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 \$4,200, for an alleged violation of mandatory safety standard 30 C.F.R. 75.400, as stated in a section 104(a) significant and substantial (S&S) Citation No. 3731402, issued on April 14, 1992.

The respondent filed a timely answer and contest, and the case was scheduled for hearing in Charleston, West Virginia, on March 17, 1993. However, the parties agreed to settle the matter, and the petitioner has filed a motion pursuant to Commission rule 30, 29 C.F.R. 2700.30, seeking approval of the proposed settlement. The respondent has agreed to pay a penalty assessment of \$2,000, in settlement of the violation.

In support of the proposed settlement, the petitioner has submitted information pertaining to the six statutory civil penalty assessment criteria found in section 110(i) of the Act, a discussion of the violation in question, and a reasonable justification for the reduction of the initial proposed penalty.

The petitioner states that the citation was issued because of accumulations of loose coal and coal dust in various locations inby the section dumping point and along the pillar lines in crosscuts in the area. The inspector found a moderate degree of negligence on the part of the respondent, and because of the extent of the accumulations he determined that it was highly likely that a fatality would occur.

Although the respondent does not contest the fact of violation, it disputes that the conditions were highly likely to cause a fatality because there was no mining being conducted in the area at the time, there was no measurable amount of methane in the area that the time or for the preceding twenty-four hours, there were no adverse roof conditions which could lead to friction or cause an ignition, and the area had been rock dusted. Under the circumstances, the petitioner believes that the evidence at trial may not establish that the violation was highly likely to cause a fatality, and it proposes to settle the violation upon the entry of an order which modifies the gravity finding of "highly likely" to "reasonably likely". Petitioner concludes that the payment of \$2,000, to settle the violation will serve to effect the intent and purpose of the Act.

Conclusion

After careful review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the motion IS GRANTED, and the settlement IS APPROVED.

ORDER

IT IS ORDERED THAT:

1. The contested section 104(a) "S&S" Citation No. 3731402, April 14, 1992, citing a violation of 30 C.F.R. 75.400, is modified to reflect a gravity finding of "Reasonably likely", and as modified, IT IS AFFIRMED.
2. The respondent shall pay a civil penalty assessment of \$2,000, in satisfaction of the violation. Payment is to be made to the petitioner (MSHA) within thirty (30) days of the date of this decision and order, and upon receipt of payment, this matter is dismissed.

George A. Koutras
Administrative Law Judge

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