

CCASE:  
SOL (MSHA) V. KEM COAL INC.  
DDATE:  
19930519  
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, : CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 92-611  
Petitioner : A.C. No. 15-12209-03538  
 :  
 : No. 2 Surface Mine  
V. :  
 :  
KEM COAL INCORPORATED, :  
Respondent :

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

Statement of the Proceeding

This proceeding concerns proposals for assessment of civil penalties 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 civil penalty assessments for four alleged violations of certain mandatory safety standards found in Part 77, Title 30, Code of Federal Regulations. The Respondent filed a timely answer denying the alleged violations, and the case was docketed for hearing on the merits.

The parties now have decided to settle the matter, and they have filed a motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of the proposed settlement. The citations, initial assessments, and the proposed settlement amounts are as follows:

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3216278	01/28/92	77.1000	\$1300	\$655
3216179	03/10/92	77.1001	\$ 595	\$595
3216041	03/11/92	77.1605(u)	\$ 595	\$595
3216042	03/11/92	77.410(a)	\$ 595	\$-0-

In support of the proposed settlement disposition of this case, the parties have submitted information pertaining to the six statutory civil penalty criteria found in Section 110(i) of the Act, included information regarding Respondent's size, ability to continue in business and history of previous violations.

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In particular, with regard to Citation No. 3216278, the parties note that the violation was caused by "differing, but equally valid interpretations of the ground control plan" and that had the violation been regularly assessed the proposed penalty would have been \$655. Joint Motion To Approve Settlement 3. With regard to Citations No. 3216179 and 3216041, the parties note that Respondent has agreed to pay in full the proposed civil penalty. Finally, with regard to Citation No. 3216042, the parties agree that the vehicle cited for an inaudible backup alarm was not the type of truck required to have such an alarm and that the citation should be vacated.

#### CONCLUSION

After review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I find that approval of the suggested reduction in the penalties assessed for the subject violations is warranted and that the proposed settlement disposition is reasonable and in the public interest. Pursuant to 29 C.F.R.

2700.30, the motion IS GRANTED, and the settlement is APPROVED

#### ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the violations in question. Further, the Secretary IS ORDERED to vacate Citation No. 3216042. Payment is to be made to MSHA within thirty (30) days of the date of this proceeding and upon receipt of payment, this proceeding is DISMISSED.

David F. Barbour  
Administrative Law Judge  
(703)756-5232

#### Distribution:

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