

CCASE:
SOL (MSHA) V. KEM COAL INC.
DDATE:
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : CIVIL PENALTY PROCEEDING
ADMINISTRATION (MSHA), :
Petitioner : Docket No. KENT 93-59
: A.C. No. 15-10180-03532
:
: No. 1 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 seven alleged violations of certain mandatory safety standards found in Parts 71 and 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, 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
3399676	09/09/92	71.400	\$ 50	\$ 50
3399677	09/09/92	77.1605(d)	\$362	\$100
3399678	09/09/92	77.410(c)	\$362	\$ 50
3399679	09/09/92	77.1605(d)	\$362	\$100
3399680	09/09/92	77.1605(d)	\$362	\$-0-
3399441	09/11/92	77.1605(d)	\$362	\$100
3399442	09/11/92	77.410(a)	\$362	\$100

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.

In particular, with regard to Citation No. 3399676, the parties noted that Respondent has agreed to pay in full the proposed civil penalty.

With regard to Citation No. 3399677, the parties note that although the audible backup warning device and tail and brake lights did not work on the cited rock truck, the gravity of the violation was greatly mitigated by the fact that the backup lights worked, there was no pedestrian traffic and minimal vehicular traffic where the truck worked and the truck rarely operated at a speed in excess of 20 mph. Moreover, the parties agree that no injury was reasonably likely to occur because of the violation and that the violation was not a significant and substantial contribution to a mine safety hazard ("S&S" violation).

With regard to Citation No. 3399678, the parties agree the inoperative backup alarm on the cited rock truck failed during the shift on which the violation was cited and that the alarm was scheduled to be repaired at the close of that same shift. Moreover, as with the previous violation, the parties agree that no injury was reasonably likely to occur due to the violation and that the violation was not S&S.

With regard to Citation No. 3399679, the parties agree that although the tail and brake lights on the cited rock truck were not operating, the gravity of the violation was greatly mitigated for the reasons set forth with respect to Citation No. 3399677 and by the additional fact that the truck was operated only 1 shift per day during a day light shift. Moreover, the parties agree that no injury is reasonably likely to occur because of the violation and the violation not S&S.

With regard to Citation No. 3399680, the parties note the violations is similar to that alleged in Citation No. 3399679 and that for the same reasons expressed concerning that violation the gravity is greatly mitigated and the violation is not S&S.

With respect to Citation No. 3399441, the parties note that although the horn on the welding truck was inoperative as alleged the truck was not licensed for highway use and was rarely used in the vicinity of pedestrians. The parties therefore agree the gravity of the violations is greatly mitigated. Because no injury was reasonably likely to occur due to the violation the parties also agree that it was not S&S.

Finally, with regard to Citation No. 3399442, the parties note that although the cited truck lacked an operable backup alarm the gravity of the violation was greatly mitigated by the fact that outside rear view mirrors on both sides of the truck provided the driver with almost complete vision of what was

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behind the truck. They also agree that no injury was reasonably likely to occur because of the violation and that the violation was not S&S.

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 violation 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. In addition, the Petitioner IS ORDERED to modify Citations No. 3399677, 3399678, 3399679, 3399680, 3399441 and 3399442 by deleting their S&S designations. 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
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