

CCASE:
SOL (MSHA) V. GARDEN CREEK POCAHONTAS
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 92-188
Petitioner : A.C. No. 44-04517-03693
v. :
 : Mine: VP-6
GARDEN CREEK POCAHONTAS :
COMPANY, :
Respondent :

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

Statement of the Proceeding

This proceeding concerns proposals for assessment of a civil penalty 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 for one alleged violation of a certain mandatory safety standard found in Part 75, Title 30, Code of Federal Regulations. The Respondent filed a timely answer denying the alleged violation.

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 citation, initial assessment, and the proposed settlement amount is as follows:

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
4002121	08/05/92	75.1102	\$189	\$136

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

In particular, with regard to Citation No. 4002121, Petitioner notes that the violation concerned the malfunctioning of Respondent's belt conveyor which was periodically starting erroneously when being idled on the sequence mode. Petitioner asserts that unbeknownst to the inspector, Respondent was fully aware of the problem and was making good faith attempts to correct it. Thus, Respondent's negligence was less than supposed

by the inspector.

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 penalty assessed for the subject violation is warranted and 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 a civil penalty in the settlement amount shown above in satisfaction of the violation in question. 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

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