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SOL (MSHA) V. MAG INC.
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SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner
v.
M A G INCORPORATED,
Respondent

: CIVIL PENALTY PROCEEDINGS
:
: Docket No. WEVA 92-1021
: A.C. No. 46-08007-03523
:
: Docket No. WEVA 92-1046
: A.C. No. 46-08007-03524
:
: Docket No. WEVA 92-1047
: A.C. No. 46-08007-03525
:
: Docket No. WEVA 92-1048
: A.C. No. 46-08007-03526
:
: Docket No. WEVA 92-1072
: A.C. No. 46-08007-03529
:
: Docket No. WEVA 92-1073
: A.C. No. 46-08007-03528
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: Docket No. WEVA 92-1133
: A.C. No. 46-08007-03530
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: Docket No. WEVA 92-1273
: A.C. No. 46-08007-03531
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: Docket No. WEVA 92-1274
: A.C. No. 46-08007-03532
:
: Docket No. WEVA 93-113
: A.C. No. 46-08007-03539
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: Docket No. WEVA 93-126
: A.C. No. 46-08007-03544
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: Docket No. WEVA 93-127
: A.C. No. 46-08007-03545
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: Docket No. WEVA 93-167
: A.C. No. 46-08007-03548
:
: Docket No. WEVA 93-176
: A.C. No. 46-08007-03549
:
: Alloy Deep Mine #2

DECISIONS APPROVING SETTLEMENTS

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern 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 fifty-four (54) alleged violations of certain mandatory safety and health standards found in Parts 70, 75, and 77, Title 30, Code of Federal Regulations. The respondent filed timely answers contesting the alleged violations, and in response to my prehearing orders, the parties advised me that they agreed to settle all of the violations. The petitioner has now filed a motion pursuant to Commission Rule 31, 29 C.F.R. 2700.31, seeking approval of the proposed settlements. The citations, initial assessments, and the proposed settlement amounts are as follows:

Docket No. WEVA 92-1021

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728176	4/1/92	75.1714(a)	\$1,700	\$950
3728177	4/1/92	75.1714-3	\$1,700	\$950

Docket No. WEVA 92-1046

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728656	5/29/92	75.321	\$431	\$250

Docket No. WEVA 92-1047

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728051	5/12/92	75.303	\$595	\$350

Docket No. WEVA 92-1048

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728046	5/12/92	75.400	\$1,600	\$950
3728047	5/12/92	75.402	\$1,000	\$950

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3728048	5/12/92	75.301	\$600	\$360
3728049	5/12/92	75.316	\$700	\$420
3728050	5/12/92	75.301	\$700	\$420

Docket No. WEVA 92-1072

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728923	6/2/92	75.400	\$3,300	\$1,600

Docket No. WEVA 92-1073

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728561	4/21/92	70.101	\$189	\$110
3728655	5/29/92	75.316	\$252	\$150
3728921	6/02/92	75.202(a)	\$252	\$150
3728928	6/07/92	75.220(a)	\$252	\$150
3728936	6/17/92	75.1101-23(c)	\$595	\$350
3728937	6/17/92	75.220(a)	\$252	\$150
3728938	6/17/92	75.220(a)	\$252	\$150

Docket No. WEVA 92-1133

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728924	6/2/92	75.316	\$1,500	\$850
3728934	6/16/92	77.1710(i)	\$50	\$30
3728935	6/16/92	75.316	\$900	\$530

Docket No. WEVA 92-1273

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3731442	7/21/92	75.202(a)	\$252	\$150
3731443	7/21/92	75.400	\$50	\$30
3731444	7/21/92	75.1107	\$168	\$100
3731445	7/21/92	75.1105	\$157	\$90
3731446	7/23/92	75.301	\$288	\$170
3731447	7/24/92	77.404(a)	\$252	\$150

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Docket No. WEVA 92-1274

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3728939	7/15/92	75.1702	\$50	\$30
3731441	7/21/92	75.1103	\$595	\$350

Docket No. WEVA 93-113

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3731448	7/24/92	75.601	\$1,500	\$850
3731452	7/24/92	75.902	\$3,000	\$1,500
3731451	7/27/92	75.512	\$800	\$460
3731459	8/02/92	75.301	\$1,500	\$850

Docket No. WEVA 93-126

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3731860	11/19/92	75.202(a)	\$267	\$160
3732401	11/19/92	75.208	\$252	\$150
3732402	11/19/92	75.220(a)(1)	\$252	\$150
3732403	11/19/92	75.1704	\$50	\$30

Docket No. WEVA 92-127

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3732407	11/24/92	75.202(a)	\$252	\$150
3732408	11/25/92	75.1725(a)	\$252	\$150
3732409	11/25/92	75.503	\$204	\$120
3732410	11/25/92	75.400	\$157	\$90
3732411	11/25/92	77.400	\$157	\$90
3732412	11/25/92	77.205(a)	\$204	\$120
3732414	11/29/92	75.517	\$252	\$150
3732416	11/29/92	77.523	\$178	\$100
3732417	11/30/92	77.400(a)	\$147	\$80

Docket No. WEVA 93-167

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3732404	11/20/92	70.101	\$235	\$140
3732405	11/24/92	75.220(a)(1)	\$1,300	\$750
3732406	11/24/92	75.360(a)	\$1,300	\$750
3732425	12/03/92	75.203(a)	\$2,000	\$1,000

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3732427	12/07/92	75.400	\$900	\$530
3732428	12/07/92	75.202(a)	\$900	\$530
3732429	12/07/92	75.362(b)	\$900	\$530
3732438	12/30/92	75.333(b)(1)	\$50	\$30

Docket No. WEVA 93-176

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3732439	12/30/92	75.220(a)(1)	\$1,100	\$650

Discussion

The pleadings filed by the petitioner contain information concerning the six statutory civil penalty criteria found in section 110(i) of the Act. In response to my prehearing orders, and in the course of a prehearing conference, the parties confirmed that the respondent is a small mine operator, and the petitioner agrees that in view of the respondent's poor financial condition, as confirmed by the respondent's financial records, payment of the full amount of the initial proposed penalty assessments, in the aggregate, will adversely affect the respondent's ability to continue in business. The parties confirmed that no accidents or injuries resulted from the cited conditions or practices, and that all of the cited conditions were timely abated by the respondent.

In further support of the proposed settlements, the petitioner's counsel has confirmed that the mitigating circumstances advanced by the respondent in its answers in these proceedings are accurate and have been confirmed by the MSHA district office that has enforcement jurisdiction over the respondent's mining operation. In this regard, petitioner's counsel further confirmed that the respondent's management has acted in good faith and has taken remedial action by reorganizing its management and supervisory staff to insure continued compliance with MSHA's safety and health standards. Under all of these circumstances, the parties believe that the proposed settlements are reasonable and in the public interest, and should be approved.

Conclusion

After careful review and consideration of the pleadings and arguments in support of the proposed settlement of these cases, I conclude and find that the proposed settlement dispositions are reasonable and in the public interest. Accordingly, pursuant to Commission Rule 31, 29 C.F.R. 2700.31, the motion filed by the petitioner IS GRANTED, and the proposed settlements agreed to by the parties ARE APPROVED.

ORDER

The total amount of the initial proposed civil penalty assessments is \$36,000, and the settlement amounts which have been approved total \$21,000. The respondent IS ORDERED to pay \$21,000, in satisfaction of the enumerated citations which have been settled in each of these cases. Payment is to be made to the petitioner (MSHA) in accordance with the following schedule which has been agreed to by the parties:

The respondent shall pay seven-thousand dollars (\$7,000), within thirty (30) days of the date of these decisions and Order. Payment shall be by check or money order made payable to the Mine Safety and Health Administration.

Within thirty (30) days after the initial payment of \$7,000, the respondent shall make a second payment of five-thousand dollars (\$5,000) to MSHA. Within thirty (30) days thereafter the respondent shall make a third payment of five-thousand dollars (\$5,000) to MSHA. A final payment of four-thousand dollars (\$4,000), shall be made by the respondent within thirty (30) days after the third payment is made.

The payments made by the respondent shall include a reference to the date of these decisions and Order approving the settlements and requiring payment.

These decisions will not become final until such time as full payment of the \$21,000, is made by the respondent to MSHA, and I retain jurisdiction in these proceedings until payment of all installments are remitted and received by MSHA. In the event the respondent fails to comply with the terms of the settlement, the petitioner may file a motion seeking appropriate sanctions or further action against the respondent, including a reopening of the cases. Upon receipt of all of the required payments, these proceedings are dismissed.

George A. Koutras
Administrative Law Judge

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