

CCASE:
SOL (MSHA) V. KENNY BOWMAN & M. H. COAL
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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 PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. SE 94-7
Petitioner : A. C. No. 40-02370-03541A
v. :
: Mine No. 10
KENNY BOWMAN, employed by, :
M. H. COAL, INC., :
Respondent :

DECISION APPROVING SETTLEMENT

Appearances: Edward H. Fitch, IV, Esq., Office of the
Solicitor, U.S. Department of Labor,
Arlington, Virginia for Petitioner;
Kenny Bowman, Dunlap, Tennessee, pro se.

Before: Judge Maurer

This case is before me upon a petition for assessment of a civil penalty under section 110(c) of the Federal Mine Safety and Health Act of 1977 (the Act). An evidentiary hearing in this matter was held on June 7, 1994, in Crossville, Tennessee. At the conclusion of that hearing, the parties filed a motion to approve a settlement agreement and to dismiss this case. A reduction in penalty from \$4,500.00 to \$1,200.00 is proposed. The citations/orders, initial assessment, and the proposed settlement amounts are as follows:

Citation/ Order No.	Proposed Assessment	Proposed Settlement
3395205	\$ 800	\$ 0
3395174	\$ 500	\$ 0
3395175	\$ 500	\$ 400
3395176	\$ 500	\$ 200
3395177	\$ 800	\$ 600
3395178	\$ 400	\$ 0
3395206	\$ 500	\$ 0
3395207	\$ 500	\$ 0
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Total	\$4,500	\$1,200

I have considered the representations and documentation submitted in this case, as well as the testimony contained in the record of proceedings and I conclude that the proffered settlement

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is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that respondent pay a penalty of \$1,200 in accordance with the payment schedule set forth below:

DATE -----	PAYMENT -----
July 20, 1994	\$100
August 20, 1994	\$100
September 20, 1994	\$100
October 20, 1994	\$100
November 20, 1994	\$100
December 20, 1994	\$100
January 20, 1995	\$100
February 20, 1995	\$100
March 20, 1995	\$100
April 20, 1995	\$100
May 20, 1995	\$100
June 20, 1995	\$100

Payments shall be made by certified or cashier's check made payable to "The U.S. Department of Labor - MSHA," and mailed to Mine Safety and Health Administration, P.O. Box 360250M, Pittsburgh, PA 15251-6250. Each payment instrument shall include the relevant docket number, SE 94-7, and the Assessment Control Number, 40-02370-03541-A. Compliance with this payout scheme requires respondent to have his monthly payments deposited in the U.S Mail by the dates above listed.

In the event of respondent's default on any of the above recited installments, the total amount of the proposed penalties as amended, less any monies paid before respondent's default, shall become due and payable and interest shall be assessed against such remaining unpaid balance at a rate provided by 28 U.S.C. 1961 from the date of default until the total amount is paid in full. Furthermore, respondent shall be liable for all court costs, attorney fees, and other expenses reasonably incurred by the U.S. Department of Labor in pursuing the recovery of the remaining unpaid balance plus any interest assessed thereon.

Upon payment in full, this proceeding is DISMISSED.

Roy J. Maurer
Administrative Law Judge

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Distribution:

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Mail)

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