

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

September 5, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 94-946
Petitioner : A. C. No. 15-15637-03557
v. :
 : Mine No. 1
BROKEN HILL MINING COMPANY, :
INCORPORATED, : Docket No. KENT 94-947
Respondent : A. C. No. 15-14959-03559
 :
 : Mine No. 3

DECISION

Appearances: Mary Sue Taylor, Esq., Office of the Solicitor, U.S.
Department of Labor, Nashville, Tennessee, for Petitioner;
Hobart W. Anderson, President, Broken Hill Mining
Company, Inc., Pikeville, Kentucky, *Pro Se*, for Respondent.

Before: Judge Hodgdon

These cases are before me on petitions for assessment of civil penalty filed by the Secretary of Labor, acting through his Mine Safety and Health Administration (MSHA), against Broken Hill Mining Company pursuant to Section 105 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815. The petitions allege several violations of the Secretary's mandatory health and safety standards and seek penalties of \$1,747.00. For the reasons set forth below, I approve the settlement agreement of the parties and assess civil penalties of \$1254.00.

The cases were heard on May 2, 1995, in Pikeville, Kentucky. At the beginning of the hearing, the parties advised that they had agreed to settle all of the citations in these cases as follows:

<u>Citation No.</u>	<u>Violation of 30 C.F.R.</u>	<u>Proposed Penalty</u>	<u>Agreement</u>
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Docket No. KENT 94-946

4217421	' 75.503	\$ 50.00	\$ 50.00
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4217422 ' 75.400 \$ 128.00 \$ 50.00¹

Docket No. K ENT 94-947

4015294	' 75.1103-1		\$ 128.00	\$ 106.00
4015295	' 75.809		\$ 119.00	\$ 50.00 ¹
4015296	' 75.333(b)(1)	\$ 50.00		\$ 50.00
4015297	' 202(a)		\$ 119.00	\$ 119.00
4015298	' 75.110123(c)(1)	\$ 50.00		\$ 50.00
4015300	' 75.1712		\$ 50.00	Vacate ²
4004141	' 75.364(h)		\$ 50.00	\$ 50.00
4004143	' 75.503		\$ 119.00	Vacate ²
4004144	' 75.503		\$ 119.00	\$ 119.00
4003846	' 77.205(a)		\$ 119.00	\$ 119.00
4041466	' 77.1103(d)		\$ 119.00	\$ 119.00
4004151	' 77.1605(k)		\$ 119.00	\$ 50.00 ¹
4017904	' 75.370(a)(1)		\$ 136.00	\$ 136.00
4017908	' 75.333(g)		\$ 136.00	\$ 136.00
4017909	' 75.400		\$ 136.00	\$ 50.00 ¹
			\$1,747.00	\$1254.00

Having considered the representations and documentation presented, (Tr. 4-17), I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act, 30 U.S.C. § 820(i).

ORDER

Accordingly, the motion for approval of settlement is GRANTED, Citation Nos. 4015300 and 4004143 are VACATED AND DISMISSED, Citation Nos. 4217422, 4015295, 4004151 and 4017909 are MODIFIED as indicated and Broken Hill Mining Company is ORDERED TO PAY a penalty of \$1254.00 within 30 days of the date of this order. On receipt of payment, these cases are DISMISSED.

¹ The Secretary moves to modify the citation to delete the "significant and substantial" designation.

² The Secretary moved to vacate this citation.

T. Todd Hodgdon
Administrative Law Judge

Distribution:

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