

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 New Jersey Avenue, NW, Suite 9500

Washington, D. C. 20001-2021

Telephone No.: 202-434-9588

Telecopier No.: 202-434-9949

January 13, 2003

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 2002-110
Petitioner : A. C. No. 15-16011-03527
v. :
 : Mine: No. 1
HIGHLANDS MINING & PROCESSING :
COMPANY, INC., :
Respondent. :

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

This case concerns a proposal for assessment of civil penalty filed pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U. S. C. § 815(d), the Act, seeking civil penalty assessment for 7 alleged violations of mandatory safety standards found in Parts 75 and 77 Title 30, Code of Federal Regulations.

The parties have settled the matter and the Solicitor has filed a motion pursuant to Commission Rule 31, 29 C.F.R. § 2700.31, seeking approval of the proposed settlement. The proposed settlement is as follows:

<u>Citation/ Order No.</u>	<u>Date</u>	<u>30 C.F.R.</u>	<u>Assessment</u>	<u>Settlement</u>
7529460	07/25/01	75.400	\$ 259.00	\$ 259.00
7529461	07/25/01	75.400	259.00	259.00
7529462	07/31/01	75.400	259.00	259.00
7529466	07/31/01	75.370(a)(1)	259.00	259.00
7529467	07/31/01	75507-(1)(a)	259.00	259.00
7529470	08/01/01	75.1106-(5)(a)	317.00	259.00
7529471	08/01/01	77.1110	259.00	184.00
Total:			\$ 1,871.00	\$ 1,738.00

Citation No. 7529460 was issued because it is alleged that dry, black, float coal had accumulated at various locations throughout the #2 Conveyor Belt for a distance of approximately 400 feet.

Citation No. 7529461 was issued because it is alleged that dry, black, float coal had accumulated at various locations throughout the #1 Conveyor Belt for a distance of approximately 300 feet.

Citation No. 7529462 was issued because it is alleged that dry, black, float coal had accumulated at various locations throughout the #3 entry of the 002 MMU immediately inby the last open cross cut which had not had rock dust applied to the roof, ribs, and floor for a distance of approximately 76 feet outby the face area.

Citation No. 7529466 was issued because it is alleged that the approved ventilation, methane, and dust control plan was not being followed as required.

Citation No. 7529467 was issued because it is alleged that a piece of non-permissible equipment was being used extensively throughout the 002 MMU immediate and main return outby the last open cross cut.

The Respondent has agreed to pay the proposed penalties for the aforementioned citations.

Citation No. 7529470 was issued because it is alleged that the compressed gas cylinder gages located outby the 002 MMU face belt drive were not maintained in safe operating condition. The parties propose to modify the gravity to “no lost workdays” and to reduce the penalty because they agree that the cylinders and gages were not in service at the time of inspection.

Citation No. 7529471 was issued because it is alleged that the fire extinguisher provided for the sub station located on the surface was not provided with a record of inspection within the prior 6 months. The parties propose to modify the negligence to “low” and to reduce the penalty because they agree that the extinguisher was fully charged and because the Solicitor is unable to refute the Respondent’s claim that the tag provided on the extinguisher was damaged by the weather.

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

After review and consideration of the pleadings, arguments and submission in support of the settlement motion, I find the proposed settlement is reasonable and in the public interest. Pursuant to 29 C.F.R. § 2700.31, the motion is **GRANTED**, and the settlement is **APPROVED**.

ORDER

The Respondent **IS ORDERED** to pay a civil penalty of \$1,738.00 in satisfaction of the violations in question. Payment is to be made to MSHA within 30 days of the date of this proceeding. Also, within the same 30 days the Secretary **IS ORDERED** to modify the gravity for Citation No. 7529470 to “no lost work days” and to modify the negligence for Citation No. 7529471 to “low.” Upon receipt of full payment and modification of these citations, this proceeding is **DISMISSED**.

David F. Barbour
Chief Administrative Law Judge

Distribution:

Tommy D. Frizzell, Conference and Litigation Representative, U.S. Department of Labor,
Mine Safety and Health Administration, H.C. 66, Box 1762, Barbourville, KY 40906

Charles Robert Stump, President, Highlands Mining & Processing Company, Inc., P.O.
Box 280, Whitesburg, KY 41858

/mvc