

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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September 9, 1999

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 98-313
Petitioner	:	A. C. No. 15-03178-03894
v.	:	
	:	Ohio No. 11 Mine
ISLAND CREEK COAL COMPANY,	:	
Respondent	:	

**DECISION**

Appearances: Joseph B. Lockett, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee for Petitioner;  
Elizabeth S. Chamberlin, Esq., Consol Inc., Pittsburgh, Pennsylvania for Respondent.

Before: Judge Bulluck

This case is before me upon a Petition for Assessment of Penalty filed by the Secretary of Labor, through the Mine Safety and Health Administration ("MSHA"), against Island Creek Coal Company ("Island Creek"), pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 ("the Act"), 30 U.S.C. §815. The Petition seeks a civil penalty of \$8,000.00 for an alleged violation of section 75.220(a)(1), 30 U.S.C. §75.220(a)(1).

A hearing on the merits was convened on July 28, 1999, in Henderson, Kentucky, during which MSHA Inspector Archie Coburn testified. Based on conclusions drawn from the inspector's testimony, the Parties entered into a discussion and negotiated a settlement, whereby Petitioner agreed to modify 104(d)(1) Citation No. 4274887 to a 104(a) citation, to reduce the level of gravity to "unlikely," and to delete the "significant and substantial" designation, and Respondent agreed to pay a reduced penalty of \$3,000.00. The settlement was approved at hearing, and that determination is hereby confirmed.

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

**ORDER**

The settlement is appropriate and in the public interest. **WHEREFORE**, the approval of settlement is **GRANTED**, and it is ordered that the Secretary modify Citation No. 4274887 to a 104(a) citation, reduce the level of gravity to “unlikely,” and delete the “significant and substantial” designation, and that Respondent pay a penalty of \$3,000.00 with thirty (30) days of this Decision. Upon receipt of payment, this case is **DISMISSED**.

Jacqueline R. Bulluck  
Administrative Law Judge

Distribution:

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