

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

March 28, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. LAKE 2001-1
Petitioner	:	A.C. No. 33-0159-04153
	:	
v.	:	
	:	
THE OHIO VALLEY COAL CO.,	:	Powhatan No. 6 Mine
Respondent.	:	

ORDER TO SHOW CAUSE

This case is before me on a Petition by the Secretary to assess a Civil Penalty for the alleged violation of 30 C.F.R. § 75.220(A)(1). The Petition proposed a Civil Penalty of \$1,270.00. After an answer was filed, I issued a Prehearing Order to direct the parties to first confer concerning the possibility of settlement and, if settlement proved impossible, to report to me concerning their respective positions on the legal and factual merits. On March 15, 2001, I received a Joint Motion to Approve Settlement and Dismiss Proceedings. The settlement agreement explained in the Motion proposed a Civil Penalty of \$765.00. The only reason given for the reduction in the proposed Civil Penalty was the action of the Respondent in promptly abating the violation as instructed. A review of Exhibit A attached to the Petition indicates that the proposed Civil Penalty of \$1,270.00 was calculated by giving a credit of \$445.00 for promptly abating the violation as instructed.

The concepts articulated by Judge Merlin in **Secretary of Labor v. Marc Bowers, etc.**, 21 FMSHRC 409 (Mar. 1999) would appear to make it inappropriate for me to approve a settlement which is not consistent with the criteria in Section 110 of the Federal Mine Safety Act. In this case it appears that the proposed settlement is calculated by double counting the abatement efforts of the mine operator. Double counting would not appear to be consistent with Section 110. Since my prospective is based on a review of less than the record available to Counsel, I consider this to be only a tentative conclusion. The parties should have the opportunity to explain and support their agreement. It is, therefore,

ORDERED that the parties are given until April 27, 2001, to Show Cause why the settlement agreement should not be disapproved and why the Motion to Approve Settlement should not be denied. The parties may file legal argument or factual information as they consider necessary. An opportunity for oral argument by telephone conference call will be granted upon request. In the absence of a showing of sufficient cause for approval of a settlement agreement, this case will be scheduled for hearing on an expedited basis.

Irwin Schroeder
Administrative Law Judge
703-756-5232

Distribution:

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