

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W., 6TH FLOOR
WASHINGTON D.C. 20006-3868

June 19, 1998

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. LAKE 98-98
Petitioner	:	A. C. No. 11-02846-03767
	:	
v.	:	
COAL MINERS INCORPORATED,:	:	Eagle Valley Mine
Respondent	:	

DECISION DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977. The Solicitor has filed a motion to approve settlement for the four violations in this case. A reduction in the penalties from \$21,000 to \$12,600 is proposed.

Order No. 4264660 was issued for a violation of 30 C.F.R. ' 75.400 because coal, coal dust and float coal dust accumulated extensively along the belt line. A reduction in the penalty from \$6,000 to \$3,600 is proposed. Citation No. 4265291 was issued for a violation of 30 C.F.R. ' 75.512 because an adequate electrical exam was not performed on the No. 9 scoop. A reduction in the penalty from \$4,000 to \$2,400 is proposed. Order No. 4265292 was issued for a violation of 30 C.F.R. ' 75.512 because an adequate electrical exam was not conducted on the continuous haulage system. A reduction in the penalty from \$6,000 to \$3,600 is proposed. Order No. 4265301 was issued for a violation of 30 C.F.R. ' 75.362(b) because an adequate examination of the belt line was not conducted on the second and third shift. Coal and coal dust accumulations were present along the entire length of the belt line and were not in the examination book. A reduction in the penalty from \$5,000 to \$3,000 is proposed.

The one citation and three orders which were issued under section 104 (d)(1) of the Act, designate the alleged violations as significant and substantial and charge that they are the result of the operator's unwarrantable failure.

In her motion the Solicitor sets forth the tonnage of the mine and the operator which indicate that the mine is large and the operator is small to medium. The history of prior violations given by the Solicitor is consistent with an average history. Finally, the Solicitor advises that

imposition of a penalty will not affect the operator's ability to continue in business.

Permanently disabling or fatal illness or injury was rated as highly likely in all the violations. The settlement motion states that gravity is unchanged and remains as issued. Negligence was rated as high in all the violations and here too, the motion states that negligence is unchanged and remains as written.

The Solicitor attempts to justify the recommended settlement by stating AA reduction is warranted in this case in recognition of Respondent's good faith efforts in abating the cited conditions within the time granted by the MSHA inspector. Further, the Respondent is strongly committed to enforcing compliance more strenuously in the future.@

I cannot approve the settlement motion. The Solicitor is reminded that the Commission and its judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act. 30 U.S.C. ' 820(k); See, S. Rep. No. 95-181, 95th Cong., 1st Sess. 44-45, reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 632-633 (1978). It is the judge's responsibility to determine the appropriate amount of penalty, in accordance with the six criteria set forth in section 110(i) of the Act. 30 U.S.C. ' 820(i); Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission, 736 F.2d 1147 (7th Cir. 1984).

The fact that in this case high gravity and high negligence remain as issued militates against any reduction, much less one of 40% as is sought here. The criteria relating to size, prior history of violations and ability to continue in business, set forth above, do not support reduction. In addition, the representation of good faith abatement does not warrant the large reductions suggested by the Solicitor. Indeed, the Solicitor does not allege that the operator made any unusual efforts to achieve abatement, but states only that abatement was accomplished within the time allowed. So too, the bare assertion that the operator is committed to more strenuous enforcement, without more, cannot support the recommended assessments. I have previously approved a substantial reduction where the representation of stronger future enforcement was accompanied by downward revisions in the levels of gravity and negligence. Florida Crushed Stone Company, Docket No. SE 98-23-M, Unpublished (May 20, 1998). I have also approved a reduction where, unlike this case, the operator's commitment to future enforcement was described in detail. MCC Incorporated, Docket No. LAKE 98-44-M, Unpublished (March 27, 1998).

If this recommended settlement were allowed, the Solicitor would be able to obtain large reductions by merely stating the operator would enforce the Act more strongly in the future. Settlements must be based on more than a few pro forma throwaway lines.

In light of the foregoing, it is **ORDERED** that the motion for approval of settlement be **DENIED**.

It is further **ORDERED** that within 30 days of the date of this order the Solicitor submit appropriate information to support her settlement motion. Otherwise, this case will be set for hearing.

Paul Merlin
Chief Administrative Law Judge

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