

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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August 10, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 2000-203
Petitioner	:	A. C. No. 36-06990-03526
	:	
v.	:	
HARRIMAN COAL CORPORATION,	:	
Respondent.	:	Mine: Lincoln Stripping

**ORDER REQUIRING SUPPORTING DOCUMENTATION**

**Before: Judge Barbour**

This case concerns a proposal for assessment of civil penalties filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 815(d)), seeking the assessment of three alleged violations of mandatory safety hazards found in Part 77, Title 30, Code of Federal Regulations.

On August 6, 2001, the Commission received the Secretary's Motion for Decision and Order Approving Settlement. In her motion, the Secretary states that the parties propose to reduce the \$150,000.00 total assessment to \$40,000.00 based upon confidential financial documentation showing Respondent's inability to pay its debts as they come due and Respondent's serious financial difficulty. The parties further contend that Respondent is no longer mining and has no source of income. The parties have not submitted the documentation necessary to support these assertions.

When deciding whether to grant or deny a settlement motion, the administrative law judge must take into consideration not only the situation of the parties at hand but also the public interest. As former Chief Administrative Law Judge Paul Merlin stated:

Under the Mine Safety Act unlike most statutes, the administrative law judge has the affirmative duty to approve a settlement, even if the parties themselves have agreed upon its terms. Under this law *the judge does not have to approve a settlement, if he determines it is not in the public's interest.* In other words, the judge is here to guarantee the public interest ... *Explo-Tech Inc.*, 16 FMSHRC 931, 933 (April 1994) (emphasis added).

The public interest requires the judge to verify a settlement's merits. However, the judge cannot do so when the parties do not document their assertions. In a previous case, I denied a motion to approve a settlement where the parties failed to provide adequate support for their contention that the proposed penalty would adversely affect the company's ability to continue in business. *Bailey's Limestone Quarry*, 19 FMSHRC 1855, 1856 (November 1997). As in that case, I must also deny the subject motion unless the parties supplement it with adequate supporting documents.

I am mindful that the parties may desire to keep sensitive financial information confidential. If so, the parties may submit the documents to me for in-camera review and may request that they be placed under seal subject to further review only by the Commission or a higher appellate body.

**THEREFORE**, it is **ORDERED** that the parties submit the required supporting documentation within 15 days of the date of this order. Failure to comply with this order will result in the denial of the settlement motion.

David F. Barbour  
Chief Administrative Law Judge

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