

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

January 3, 1997

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| CONSOLIDATION COAL COMPANY, | : | CONTEST PROCEEDING |
| Contestant | : | |
| v. | : | Docket No. WEVA 94-235-R |
| | : | Citation No. 3101220; 4/19/94 |
| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | Robinson Run No. 95 Mine |
| ADMINISTRATION (MSHA), | : | Mine ID 46-01318 |
| Respondent | : | |

DECISION AFTER REMAND

This contest proceeding, arises under section 105 of the Federal Mine Safety and Health Act 1977 (the Act) (30 U.S.C. ' 815) and involves the validity of a citation issued pursuant to section 104(a) of the Act. The citation alleges that Consolidation Coal Company (Consol) violated mandatory safety standard 30 C.F.R. ' 75.342(b)(2) and that the violation was a significant and substantial contribution to a mine safety hazard. Consol maintains it did not violate the standard.

The matter was assigned to Commission Administrative Law Judge Arthur Amchan who scheduled an expedited hearing. At the hearing, the Secretary moved to amended the citation to one issued pursuant to section 104(d)(2) of the Act (30 U.S.C. ' 814(d)(2)) and to add to the citation a finding of unwarrantable failure.

In a decision on the merits, (Consolidation Coal Company, 16 FMSHRC 1241 (June 1994)), Judge Amchan held that Consol did not violated section 75.342(b)(2). The standard requires methane monitors on longwall face equipment to give warning signals when methane concentrations reach 1.0 percent and that the warning signal devices be visible to persons who can deenergize the equipment. The judge concluded Consol's method of compliance provided Aequivalent protection@ to the standard (16 FMSHRC 1245). Accordingly, the judge vacated the citation.

The Secretary sought and was granted review. On review, the Commission held that the evidence established a clear violation of the standard (Consolidation Coal Company, 18 FMSHRC ____ (November 4, 1996)). Therefore, the Commission reinstated the citation and remanded the case for consideration of the Secretary's motion to modify the citation to a section 104(d)(2) order and for the assessment of a civil penalty 18 FMSHRC ____

(November 4, 1996) (Slip Op. 5). (On remand, the case was reassigned to me, as Judge Amchan had left the Commission.)

Subsequent to the Commission's decision, the parties entered into settlement negotiations. As a result, the Secretary has withdrawn his motion to modify the citation. Further, the Secretary and Consol have agreed that a civil penalty of \$204 is appropriate for the violation of section 75.342(b)(2). Finally, the parties have agreed that the settlement in no way affects A[Consol's] right to appeal the Commission's decision . . . once that decision becomes final@ (Motion to Enter Order Assessing Civil Penalty 2).

Having considered the proposed settlement in light of the statutory civil penalty criteria and the purposes of the Act, I find it is reasonable and in the public interest. Accordingly, the motion is **GRANTED** and the settlement is **APPROVED**.

ORDER

Consol is **ORDERED** to pay a civil penalty of \$204 for the violation of section 75.342(b)(2) as set forth in Citation No. 3101220, dated April 19, 1994. Payment shall be made to MSHA within 30 days of the date of this decision. Upon receipt of full payment, this proceeding is **DISMISSED**.

David Barbour
Administrative Law Judge

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