

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

August 3, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 98-148
Petitioner	:	A. C. No. 46-01433-04274
v.	:	
	:	Loveridge No. 22
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION ON REMAND
APPROVING SETTLEMENT

Before: Judge Feldman

The initial decision in this matter held that Consolidation Coal Company’s (Consol’s) violations of the mandatory safety standards in 30 C.F.R. §§ 75.400 and 75.360(a)(1), prohibiting combustible coal dust accumulations in active workings and requiring adequate preshift examinations, respectively, were not attributable to Consol’s unwarrantable failure. 22 FMSHRC 455 (Mar. 2000) (ALJ). On remand, the Commission reversed and reinstated 104(d)(2) Order No. 4889944 concerning Consol’s violation of section 75.400 and reversed the negative unwarrantable failure determination with respect to 104(d) (2) Order No. 4889946 concerning the section 75.360(a)(1) violation. 23 FMSHRC 588 (June 2001). Thus, in light of its remand decision, the Commission directed me to reconsider the appropriate civil penalty to be assessed for Order No. 4889944, and to reevaluate whether Consol’s violation of section 75.360(a)(1) was unwarrantable and to reconsider the appropriate civil penalty that should be imposed. *Id.* at 598.

As a result of a telephone conference with the parties, a settlement has been reached that resolves all outstanding issues. For settlement purposes, the parties have agreed to reinstatement of the unwarrantable failure with respect to 104(d)(2) Order No. 4889946. Consol has agreed to pay the \$9,000.00 civil penalty initially proposed by the Secretary for Order No. 4889944. Consol has also agreed to a reduction in civil penalty, from \$9,000.00 to \$6,000.00, for Order No. 4889946. The reduction in civil penalty is based on a reduction in culpability, in that, having already decided to subordinate its coal dust accumulation cleanup efforts to its desire to complete construction, a decision that has been determined to be unwarrantable in nature, Consol elected not to note the accumulations in its preshift examination in contemplation of cleaning the accumulations prior to the resumption of coal production activities. The reduction in civil

penalty for Order No. 4889946 is a reflection that Consol's high degree of negligence has already been considered in the parties' settlement with respect to the unreduced penalty for Order No. 4889944.

I have considered the representations and documentation submitted in this matter, and I conclude that the proffered settlement is consistent with the Commission's remand instructions, and, that it is otherwise appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the motion for approval of settlement **IS GRANTED**, and **IT IS ORDERED** that Consolidation Coal Company pay a civil penalty of \$15,000.00 in satisfaction of 104(d)(2) Order Nos. 4889944 and 4889946 within 45 days of this Decision, and, upon receipt of timely payment, this case **IS DISMISSED**.¹

Jerold Feldman
Administrative Law Judge

Distribution:

M. Yusuf M. Mohamed, Esq., Office of the Solicitor, U.S. Department of Labor,
4015 Wilson Blvd., Suite 516, Arlington, VA 22203 (Certified Mail)

Robert M. Vukas, Esq., Consolidation Coal Company, 1800 Washington Road, Pittsburgh,
PA 15241 (Certified Mail)

/hs

¹ The agreed upon \$15,000.00 civil penalty in satisfaction of 104(d)(2) Order Nos. 4889944 and 4889946 is in addition to the \$4,500.00 settlement the parties reached at trial with respect to the remaining alleged violative conditions that were the subjects of this proceeding. 22 FMSHRC at 472. Thus, the total civil penalty to be paid by Consol in this case is \$19,500.00.