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SOL (MSHA) V. CONSOLIDATION COAL
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceeding

Docket No. MORG 79-56-P
A/O No. 46-01433-03011

v.

Loveridge Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENTS
ORDER TO PAY

On June 1, 1979, the Solicitor filed a motion to approve settlements in the above-captioned proceeding.

In his motion, the Solicitor advises the following:

1. The attorney for the Secretary and the respondent's attorney Michel Nardi have discussed the alleged violations and the six statutory criteria stated in Section 110 of the Federal Mine Safety and Health Act of 1977.
2. Pursuant to those discussions, an agreed settlement has been reached between the parties in the amount of \$1,458. The original assessment for the alleged violations was \$2,002.
3. A reduction from the original assessment is warranted because each of the violations was committed by one of four independent contractors engaged in construction activities at the Loveridge Mine and plant area. The contractors are West Virginia Electric Company, Industrial Contracting, Neely Construction Company and Iron Working Contractors. Accordingly, the operator's negligence in these circumstances should be reduced. The proposed settlement amounts have been reached by reducing negligence points approximately one-half thereby computing a new total number of points. These points were converted, by the use of the penalty conversion table, to the amounts proposed herein as settlement of this claim is as follows:

CITATION NO.	DATE	STANDARD	ORIGINAL AMOUNT	PROPOSED SETTLEMENT
18804	8/10/78	77.402	\$140	\$106
18806	8/10/78	77.402	\$180	\$130
18808	8/10/78	77.701	\$130	\$ 98
18810	8/10/78	77.505	\$130	\$ 98
18812	8/10/78	77.516	\$130	\$ 98
18814	8/10/78	77.516	\$170	\$130
18844	8/8/78	77.204	\$170	\$114
18845	8/8/78	77.205	\$160	\$114
18846	8/8/78	77.205	\$160	\$106
18847	8/8/78	77.204	\$160	\$114
18848	8/8/78	77.1112	\$122	\$ 90
14259	8/9/78	77.402	\$180	\$130
15174	8/29/78	77.410	\$170	\$130
			TOTAL	\$1,458

In *Secretary of Labor, Mine Safety and Health Administration v. Republic Steel Corporation* (79-4-4) dated April 11, 1979, the Federal Mine Safety and Health Review Commission held that under the 1969 Act, the Secretary of Labor could issue citations against the owner of a coal mine for violations committed by independent contractors. Under the present Act, an operator is specifically defined to include an independent contractor as well as the operator. However, I believe the fact that the independent contractor now is specifically defined as an operator does not limit the Secretary's discretion with respect to whom to cite. Chief Judge Broderick reached the same conclusion in *Secretary of Labor, Mine Safety and Health Administration v. Old Ben Coal Company* (VINC 79-119-P) dated April 27, 1979. Accordingly, the citations against the operator here are proper. The Commission also held in *Republic* that where an enforcement action is undertaken against the operator, the independent contractor may also be proceeded against in a separate or consolidated proceeding. I believe the amount of the penalty properly can take into account the circumstances of the violations. Chief Judge Broderick also reached the same conclusion in the *Old Ben* case cited above. Accordingly, I accept the Solicitor's representations.

ORDER

The operator is ORDERED to pay \$1,458 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge