

CCASE:  
SOL (MSHA) V. INCOAL  
DDATE:  
19841031  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

v.

INCOAL, INCORPORATED,  
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. KENT 83-171  
A/O No. 15-02290-03508

Docket No. KENT 83-240  
A.C. No. 15-02290-03512

No. 11 Mine

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On October 19, 1984, the Secretary filed a motion to approve a settlement agreement in the above cases.

The two dockets involve nine orders of withdrawal which were issued during the investigation of a coal dust explosion which occurred at the subject mine on December 7, 1981. A copy of the Investigation Report was filed with the settlement motion. The explosion resulted in the deaths of eight miners including the section foreman. The investigation concluded that the explosion occurred with the face and right crosscut were being blasted simultaneously from the solid in the No. 1 entry. A train of explosives in the second hole from the right rib failed to detonate causing the rib hole to blow out and igniting coal dust in suspension from the blast of the other holes and coal dust in suspension which had accumulated on the floor, roof and ribs.

Citation No. 1112641 charged a violation of 30 C.F.R. 75.400 because of an accumulation of coal dust. It was originally assessed at \$10,000 and the parties propose to settle for \$10,000.

Two orders, Nos. 1111027 and 1111028, charged separate violations of 30 C.F.R. 75.1303 because (1) blast holes were being shot with excessive explosive powder in the hole and without proper stemming; (2) one blast hole contained a continuous train of undetonated explosives without a blasting cap. Each of these violations was assessed at \$10,000, and the parties propose to settle each for the payment of \$10,000.

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Order No. 1112643 charged a violation of 30 C.F.R. 75.316 because line brattice was not installed or maintained to provide adequate ventilation to the working faces. This violation was assessed at \$8,000 and the parties propose to settle for \$8,000.

Order No. 1112645 charged a violation of 30 C.F.R. 75.403 because the mine dust had an incombustible content below the minimum required for the intake and return aircourses. This violation was assessed at \$8,000, and the parties propose to settle for \$4,000.

Order No. 1112642 charged a violation of 30 C.F.R. 75.1307 because the explosives for use in the working places were not kept in separate closed containers located out of the line of blast and not less than 50 feet from the working face. This violation was originally assessed at \$6,000 and the parties propose to settle for \$6,000.

Order No. 1112644 charged a violation of 30 C.F.R. 75.401 because water was not applied to coal dust on the ribs and roof to minimize explosive hazards. This violation was originally assessed at \$6,000 and the parties propose to settle for \$6,000.

Order No. 1111026 charged a violation of 30 C.F.R. 75.1305 because explosives in their original shipping paper were transported to the working section in an exposed metal bucket of a battery powered scoop. This violation was originally assessed at \$5,000 and the parties propose to settle for \$2,000. The investigation did not implicate this violation as a cause of, or as contributing to the fatal explosion.

Order No. 1111025 (in Docket No. KENT 83-240) charged a violation of 30 C.F.R. 75.1702 because the operator did not effectively search for smoking materials to insure that persons entering the underground areas of the mine did not carry smoking materials, matches or lighters. This violation was originally assessed at \$1,000 and the parties propose to settle for \$1,000. The investigation did not implicate this violation as a cause of, or as contributing to the fatal explosion.

Thus, the nine violations were originally assessed at a total amount of \$70,000. The settlement proposal totals \$57,000. In addition, the parties propose that the \$57,000 be paid in 6 monthly installments as follows: \$7,000 shall be paid on the last day of November, 1984 and \$10,000 shall be paid on the last day of each of the next 5 months. This

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method of payment is proposed because the operator states that the financial condition of the operator makes payment very difficult. The operator does not admit that the violations charged in the orders and citation occurred.

All of the violations involved in these proceedings were very serious. Those directly related to the cause of the explosion, Citation No. 1112641, Order Nos. 1111027 and 1111028 were extremely serious and were assessed at the statutory maximum amount. Those contributing to the fatal explosion, Order Nos. 1112643, 1112642, and 1112644 were assessed at \$8,000, \$6,000 and \$6,000 respectively. These violations were also extremely serious. The violations of 30 C.F.R. 75.1305 (Order No. 1111026) and 30 C.F.R. 75.403 (Order No. 1112645), while very serious were not directly related to the explosion, nor was the violation of 30 C.F.R. 75.1702 (Order No. 1111025). All were the result of the operator's negligence.

The operator is of medium size. The payment of the penalties will not affect its ability to remain in business.

I have carefully considered the settlement proposal in the light of the criteria in section 110(i) of the Act and conclude that it is in the public interest.

Therefore, IT IS ORDERED that the settlement motion is GRANTED; IT IS FURTHER ORDERED that the operator pay the sum of \$7,000 on the last day of November, 1984 and the sum of \$10,000 on the last day of each month for the following 5 months until the total of \$57,000 is paid. When that amount has been paid these proceedings are DISMISSED.

James A. Broderick  
Administrative Law Judge