

CCASE:  
MSHA V. COUGAR COAL  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 92-878  
Petitioner : A.C. No. 15-17162-03506  
v. :  
 : No. 4 Mine  
COUGAR COAL COMPANY, :  
INCORPORATED, :  
Respondent :

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

Statement of the Proceeding

This proceeding concerns proposals for assessment of civil penalties filed by the Petitioner against the Respondent pursuant to Section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for six alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations. The Respondent filed a timely answer denying the alleged violations.

The parties now have decided to settle the matter, and they have filed a motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of the proposed settlement. The citations, initial assessments, and the proposed settlement amounts are as follows:

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
4020311	04/14/92	75.1100-3	\$168	\$ 50
4030313	04/14/92	75.400	\$168	\$168
4030314	04/14/93	75.1100-3	\$168	\$ 50
4030316	04/14/93	75.1105	\$168	\$ 50
4030317	04/14/92	75.400	\$168	\$168
4030318	04/14/92	75.1100-3	\$168	\$ 50

In support of the proposed settlement disposition of this case, the parties have submitted information pertaining to the six statutory civil penalty criteria found in Section 110(i) of the Act, included information regarding Respondent's size, ability to continue in business and history of previous violations.

In particular, with regard to Citation No. 4030311, which

was issued because the water had been turned off a deluge-type

spray on a conveyor belt drive, the parties note the Respondent was working on the system when the violation was cited and that four other systems offering fire protection were operative. In addition, the mine was wet and no methane was present. The parties therefore assert the citation should be modified to reflect the condition was unlikely to result in an accident.

With regard to Citation No. 4030313, which was issued for accumulations of loose coal and coal dust at the head drive and outby, the parties state the Respondent has agreed to pay in full the proposed civil penalty.

With regard to Citation No. 4030314, which was issued because water would not flow through the deluge-type spray system for a belt drive, the parties note the water had been turned off while Respondent worked on the system and that it had been off for only a short time. In addition, the mine was wet and no methane was present. The parties, therefore, assert the citation should be modified to reflect the condition was unlikely to result in an accident.

With regard to Citation 4030316, which was issued because a power center was not being ventilated directly into a return aircourse, the parties note the condition had existed, but one shift and, more important, under current regulations the condition would not constitute a violation. The parties therefore assert the citation should be modified to reflect the condition was unlikely to cause an accident.

With regard to Citation No. 4030317, which was issued for an accumulation of float coal dust on a belt conveyor line, the parties note the Respondent has agreed to pay in full the proposed civil penalty.

Finally, with regard to Citation No. 4030318, which was issued because water would not flow through a deluge-type fire fighting system or a belt drive, the parties note the Respondent was working on the system at the time the violation was cited and that four other fire fighting systems were available at the belt drive. In addition, the mine was wet and no methane was present. Therefore, the parties assert the citation should be modified to reflect the condition was unlikely to cause an accident.

#### CONCLUSION

After review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I find that approval of the proposed settlement is warranted in that the proposed settlement disposition is reasonable and in the public interest. Pursuant to 30 C.F.R. 2700.30, the motion IS GRANTED, and the settlement is APPROVED.

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ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the violations in question. Petitioner is ORDERED to modify Citation Nos. 4030311, 4030314, 4030316, and 4030318 to reflect injury or illness is unlikely due to the violations. Payment is to be made to MSHA within thirty (30) days of the date of this proceeding and upon receipt of payment, this proceeding is DISMISSED.

David F. Barbour  
Administrative Law Judge  
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