

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 16, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE AND SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-521
Petitioner	:	A.C. No. 15-16454-03552
	:	
v.	:	Henderson Mine No. 1
	:	
GREEN COAL COMPANY, INC.,	:	Docket No. KENT 94-1249
Respondent	:	A.C. No. 15-01982-03537
	:	
	:	K-9 Mine

DECISION

Appearances: Arthur J. Parks, Litigation Representative, Mine Safety and Health Administration, Madisonville, Kentucky, in Docket No. KENT 94-521, Donna E. Sonner, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, in Docket No. KENT 94-1249, for the Petitioner; James E. Curtis, Safety Director, Green Coal Company, Owensboro, Kentucky, for the Respondent.

Before: Judge Feldman

These proceedings concern petitions for assessment of civil penalties filed by the Secretary of Labor against the respondent corporation pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. ' 820(a). The petitions in these single citation docket cases sought to impose a total civil penalty of \$559 for the alleged violations of the cited mandatory safety standards.

These matters were called for hearing on February 22, 1995, in Owensboro, Kentucky. At the commencement of the hearing, the parties informed me that they had reached a settlement. Litigation Representative Arthur J. Parks presented the settlement terms for the Secretary in Docket No. KENT 94-521. This proceeding concerns a proposed civil penalty of \$431 for Citation No. 4056530 that cited an alleged significant and substantial violation of the mandatory safety standard in section

77.512, 30 C.F.R. ' 77.512. This standard requires cover plates on electric equipment to be kept in place at all times. The citation was issued because of an open door on a 60-amp circuit breaker box at the de-watering pump motor starter cabinet. The parties agreed to \$125 as a reduced penalty in satisfaction of this citation.

Donna E. Sonner presented the settlement terms in Docket No. KENT 94-1249. This docket proceeding involves Citation No. 4067042 issued for an alleged violation of section 72.620, 30 C.F.R. ' 72.620, which requires the use of effective dust control measures when drilling at surface mines. The respondent was cited for failure to control coal dust because of malfunctioning flaps on the highwall drill. The parties agreed to a reduction in penalty from \$128 to \$50.

The reduction in penalty in these proceedings is based upon the respondent's size and financial difficulties. In this regard, the Secretary stipulated that the respondent be a medium size operator. The respondent's Safety Director, James E. Curtis, testified that the company has recently ceased operation at one mine site resulting in the layoff of 80 people, and, that employment has been reduced from 148 to 120 at its other mine site.

While a reduction in penalty in these proceedings from \$559 to \$175 will not materially impact on the respondent's ability to pay the penalty or affect its ability to remain in business, I am not inclined to interfere with the parties' agreement. Consequently, I conclude that the proffered agreement should be approved in that it is not inconsistent with the pertinent settlement criteria in Section 110(i) of the Act, 30 U.S.C. ' 820(i).

ORDER

In view of the above, the parties' motion to approve settlement **IS GRANTED**. Accordingly, **IT IS ORDERED** that the respondent pay a total civil penalty of \$175 in satisfaction of the two citations in issue in these matters. Payment is to be made to the Mine Safety and Health Administration within 30 days of the date of this decision. Upon timely receipt of the \$175 payment, Docket Nos. KENT 94-521 and KENT 94-1249 **ARE DISMISSED**.

Jerold Feldman
Administrative Law Judge

Distribution:

Arthur J. Parks, Litigation Representative, Mine Safety and Health Administration, 100 YMCA Drive, Madisonville, KY 42431 (Certified Mail)

Donna E. Sonner, Esq., Office of the Solicitor, U. S. Department of Labor, 2002 Richard Jones Road, Suite B-201, Nashville, TN 37215 (Certified Mail)

James E. Curtis, Safety Director, Green Coal Company, P.O. Box 841, Owensboro, KY 40962 (Certified Mail)

/rb