

CCASE:  
SOL (MSHA) V. ALABAMA PRODUCTS  
DDATE:  
19840316  
TTEXT:

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

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

v.

ALABAMA BY-PRODUCTS CORP.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 83-44  
A.C. No. 01-00340-03536

Gorgas America No. 7 Mine

DECISION  
DENYING MOTION TO  
WITHDRAW PLEADINGS BUT  
APPROVING SETTLEMENT

Before: Judge Fauver

The parties have moved to withdraw their pleadings on the ground that Respondent has tendered payment of the full civil penalty petitioned by the Secretary.

Sufficient grounds have not been shown for a withdrawal of the pleadings. Accordingly, the motion to withdraw is DENIED. The parties' motion is, in effect, and will be considered as a motion to approve settlement by payment of the civil penalty petitioned by the secretary.

This case involves a single charge of a violation under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. Respondent is cited for a violation of 30 CFR 75.400 because of loose coal and coal dust accumulations in the No. 3 miner section. The Secretary's Narrative Findings for a Special Assessment state that the accumulations extended about 180 feet in the heading entry and in the Nos. 1 and 2 left entries, that they were 4 to 10 inches deep in the entries and connecting crosscuts, that they constituted a serious violation because of a risk of fire or explosion, and that the violation was due to negligence because the condition was readily observable and should have been detected by the mine examiner, reported and cleaned up. Respondent demonstrated a good faith effort to achieve rapid abatement of the cited condition. In the 24-month period preceding the date of the charge Respondent had a total of 316 charges of violations in 670 inspection days.

~700

I find that the amount of penalty proposed, \$750, is consistent with the statutory criteria for civil penalties and is supported by the record. Accordingly, the settlement will be approved.

ORDER

WHEREUPON IT IS ORDERED that Respondent shall pay a civil penalty of \$750 within 30 days of the Decision, and upon such payment this proceeding is DISMISSED.

William Fauver  
Administrative Law Judge