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SOL (MSHA) V. DRUMMOND  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. SE 86-24  
A.C. No. 01-00323-03557

v.

Chetopa Mine

DRUMMOND COMPANY, INC.,  
AS SUCCESSOR BY MERGER TO  
ALABAMA BYÄPRODUCTS  
CORPORATION,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding 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 a civil penalty assessment in the amount of \$700, for an alleged violation of mandatory safety standard 30 C.F.R. 75.200, as stated in a section 104(d)(2) Order No. 2603334, served on the respondent by an MSHA inspector on July 30, 1985.

The respondent filed a timely answer and contest, and the case was scheduled for hearing in Birmingham, Alabama, on July 16, 1986. However, the parties have now filed a motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of a settlement of the case. The respondent agrees to pay a civil penalty in the settlement amount of \$500, and upon approval, withdraws its request for a hearing in this case.

Discussion

The respondent received the order in question as a result of a continuous miner being operated in violation of the roof-control plan. Specifically, the distance from the machine controls to the bits of the ripperhead was 20 feet while the coal had been cut to a depth of 22 feet inby the last row of

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permanent roof supports. Consequently, the miner operator was at least 2 feet beyond the permanent supports.

In support of the proposed settlement reduction of the initial proposed civil penalty assessment in this case, the petitioner's counsel asserts that the respondent employs a progressive disciplinary program for instances of employee misconduct, and that it was implemented in this case. Counsel states that the continuous miner operator received a written reprimand for violating the roof-control plan. Under the circumstances, counsel argues that the respondent's negligence should be considered as slightly moderate, and that in view of all of the available evidence, the parties agree that the proposed settlement disposition of this case is proper and in the public interest.

#### Conclusion

After careful review and consideration of the pleadings and arguments made in support of the motion to approve the proposed settlement disposition of this case, I conclude and find that it is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the motion IS GRANTED, and the settlement IS APPROVED.

#### ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$500 to the petitioner within thirty (30) days of the date of this decision. Upon receipt of payment, this matter is dismissed.

George A. Koutras  
Administrative Law Judge