

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

AUG 8 1986

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. SE 86-46
Petitioner : A. C. No. 01-00515-03632
 :
v. : Mary Lee No. 1 Mine
 :
ALABAMA BY-PRODUCTS CORP., :
Respondent :

DECISION

Appearances: William Lawson, Esq., Office of the Solicitor,
U.S. Department of Labor, Birmingham, Alabama,
for Petitioner.

Before: Judge Merlin

This case is a petition for the assessment of a civil penalty filed by the Secretary against Alabama By-Products Corporation. By Notice of Hearing dated July 22, 1986, the hearing was set for August 6, 1986, in Birmingham.

On August 5, 1986, at the conclusion of hearings on cases set for that day, the Solicitor asked to be heard with respect to this case. The Solicitor advised on the record that the citation which was the subject of the penalty assessment had been vacated by MSHA. He moved to dismiss, explaining that the citation had been issued for a violation of the operator's roof control plan but that upon further consideration MSHA had concluded that the plan did not cover the situation in question. Upon inquiry from the bench, the Solicitor gave assurances that both the operator and MSHA were now reviewing the roof control plan in light of this case.

Finally, the Solicitor advised that, if required, operator's counsel would appear the following morning as had been scheduled. However, in light of the Solicitor's representations, further appearances by counsel were excused and additional hearing was deemed unnecessary.

In light of the foregoing, this case is Dismissed.



Paul Merlin
Chief Administrative Law Judge

Distribution:

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