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MSHA V. DRUMMOND
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 5, 1989

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	CIVIL PENALTY PROCEEDING Docket No. SE 89-91 A. C. No. 01-00323-03614
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v. Chetopa Mine

DRUMMOND COMPANY, INC.,
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 civil penalties filed by the Secretary under section 110 of the Federal Mine Safety and Health Act of 1977. When the matter came on for hearing the Solicitor advised that the parties had agreed to a settlement of all the violations. With approval from the bench the appearance of operator's counsel was excused and the Solicitor made the joint settlement recommendations upon the record. Other cases were heard on the merits at the same time.

Citation No. 3015760 was issued for a violation of 30 C.F.R. 75.400 because of an accumulation of loose coal dust and float coal dust. The original assessment was \$213 and the proposed settlement was \$150. Gravity was less than originally thought because some of the cited areas were wet and the belt was touching coal in only two locations. The foregoing representations were accepted from the bench and the settlement was approved.

Citation No. 3017898 was issued for a violation of 30 C.F.R. 75.1105 because metal fire proofing was missing from the right coal rib in a battery charging area. The original assessment was \$119 and the proposed settlement was \$100. The Solicitor advised that the fire proofing had been in place previously but apparently had been inadvertently struck by a ram car which had knocked it out of position. Gravity and negligence were less than originally thought because the violation had been in existence for only a short period of time. The foregoing representations were accepted from the bench and the settlement was approved.

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Citation No. 3019641 was issued for a violation of 30 C.F.R. 75.400 because of an accumulation of loose coal, coal dust and greas on a scoop. The original assessment was \$119 and the proposed settlement was for \$100. negligence was less than originally thought because the scoop which was subject to the operator's regular clean up program was frequently used and indications were that the condition had not existed for any appreciable period of time. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Citation No. 3019642 was issued for a violation of 30 C.F.R. 75.503 because an opening in excess of .005 inches was present in th cover plate of a main breaker panel. The original assessment was \$119 and the proposed settlement was for \$100. Negligence was less than originally thought because the condition had existed for a very short period of time and resulted from the fact that the one small bolt apparently had not been sufficiently tightened for permissibility purposes. The operator has had very few permissibility violations. The foregoing representations were accepted from the bench and the settlement was approved.

The operator agreed to pay the original assessments for the remaining two violations. The circumstances of these violations were explained on the record and I accepted the proffered amounts from the bench.

In light of the foregoing the recommended settlements are APPROVED and the operator is ORDERED TO PAY \$914 within 30 days from the date of this order.

Paul Merlin
Chief Administrative Law Judge

Distribution:

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