

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 29, 1990

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 90-82
Petitioner	:	A. C. No. 01-00323-03633
	:	
v .	:	Chetopa Mine
	:	
DRUMMOND COMPANY	:	
INCORPORATED,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT  
ORDER TO PAY

Before: Judge Merlin

The parties have filed a joint motion to approve settlement of the one violation involved in this case. The originally assessed penalty was \$1,000 and the proposed settlement is \$600. The parties have discussed the violation in light of the six statutory criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977.

Citation No. 3020731 was issued for a violation of 30 C.F.R. § 75.316 because a travelway was not maintained around a partial mining area due to roof falls near the survey station. The approved ventilation plan requires that travel be maintained until the area is sealed. The parties represent that the proposed reduction is justified because negligence and gravity were less than originally estimated. According to the parties, the operator was travelling and examining the return air course up to the back portion of the roof fall and the air course beyond the roof fall. However, the partial area of the air course where the roof fall was located, was not being traveled because the operator erroneously believed that it did not have to provide a travelway throughout the entire return air course. The operator thought that in order to comply with the plan, **it** only was required to examine behind the gob area. The parties advise that the operator is now aware of **its** responsibilities under the plan and that it immediately engaged in a good faith effort to correct the situation. They also aver that gravity is reduced because the number of miners affected by the violation was three or four instead of the eleven originally identified. I accept the foregoing representations and find that gravity and negligence were less than originally thought and approve the recommended settlement which remains a substantial amount.

Accordingly, it is ORDERED that the proposed settlement be APPROVED and the operator PAY \$600 within 30 days of the date of this decision.



Paul Merlin  
Chief Administrative Law Judge

Distribution:

William Lawson, Esq., Office of the Solicitor, U. S. Department of Labor, Suite 201, 2015 Second Avenue North, Birmingham, AL 35203 (Certified Mail)

J. Fred **McDuff**, Esq., Drummond Company Inc., P. O. Box 10246, Birmingham, AL 35202 (Certified Mail)

Ms. Joyce Hanula, Legal Assistant, UMWA, 900 15th Street, N.W., Washington, DC 20005 (Certified Mail)

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