

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W., 6TH FLOOR
WASHINGTON, D. C. 20006-3868

May 19, 1999

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 99-39
Petitioner	:	A. C. No. 01-02901-03658
	:	
v.	:	
	:	
DRUMMOND COMPANY,	:	Shoal Creek Mine
INCORPORATED,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Merlin

This case is before me upon a petition for assessment of the civil penalties filed under section 105(d) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlements. A reduction in the penalties from \$6,000 to \$2,950 is proposed.

Order No. 4477477 was issued under section 104(d)(1) of the Mine Act for a violation of 30 C.F.R. § 75.400 because loose coal and coal dust accumulated at various locations in the bleeder roadway. The originally assessed penalty was \$1,000 and the proposed settlement is \$100. The parties advise that MSHA modified the violation from a 104(d)(1) order to a 104(a) citation, deleted the unwarrantable failure finding and reduced negligence from high to low prior to the assessment of a penalty. However, these modifications were not considered when the penalty was calculated by MSHA. Therefore, the reduction reflects the penalty that would have been assessed had MSHA considered the changes to the violation.

Order No. 4477476 was issued under section 104(d)(1) of the Mine Act for a violation of 30 C.F.R. § 75.1903(a)(2) because the underground diesel fuel storage facilities were not provided with self-closing doors. The violation was designation non-significant and substantial and resulted from the operator's unwarrantable failure. The originally assessed penalty was \$1,000 and the proposed settlement is \$100. In their joint motion the parties request that the violation be modified from a 104(d)(1) order to a 104(a) citation, that the unwarrantable failure finding be deleted and that negligence be reduce from high to moderate. The parties advise that there is no evidence that the operator was aware or should have been aware of this condition nor is there evidence indicating how long this condition existed. Finally, the parties state that the area was inspected daily by the operator and there is no record that the doors were inoperative or in need of repair.

Citation No. 4480767 was issued under section 104(d)(1) of the Mine Act for a violation of 30 C.F.R. § 75.400 because coal and coal dust accumulated along both sides of the slope belt for approximately 4,500 feet. The citation further notes that the fire boss book contained notes that the slope belt needed cleaning on each shift for the two weeks prior to the issuance of the citation. The violation was designated significant and substantial and that it resulted from the operator's unwarrantable failure. The originally assessed penalty was \$4,000 and the proposed settlement is \$2,750. The parties request in their motion that the violation be modified from a 104(d)(1) citation to a 104(a) citation, that the unwarrantable failure finding be deleted and that negligence be reduced from high to moderate. The parties advise that the accumulations were caused when the longwall sections encountered water problems resulting in water being transported along with the coal on the conveyor system. While traveling up the incline of the slope belt, coal and water would frequently wash off the conveyor onto the mine floor.

The parties advise in their joint motion that at the time of the violation the operator was in the process of addressing the problems with the slope belt. According to the motion, the operator had committed to spending \$217,000 for the repair of the surge bin which is used to maintain an even distribution of coal throughout the length of the slope belt. The operator also purchased and installed a mini-conveyor system at the bottom of the slope to return coal fines and spillage back onto the slope belt. (It subsequently ordered a second mini-conveyor). Finally, the operator had attended to the accumulations along the slope belt by assigning additional personnel to keep the area clean. The motion states that these facts were unknown to MSHA when the citation was issued.

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlements are appropriate under the criteria set forth in section 110(i) of the Act.

In light of the foregoing, the motion for approval of settlements is **GRANTED**.

It is **ORDERED** that Order No. 4477476 be **MODIFIED** from a 104(d)(1) order, to delete the unwarrantable failure finding and to reduce negligence from high to moderate.

It is further **ORDERED** that Citation No. 4480767 be **MODIFIED** from a 104(d)(1) citation, to delete the unwarrantable failure finding and to reduce negligence from high to moderate.

It is further **ORDERED** that the operator pay a penalty of \$2,950 within 30 days of this decision.

Paul Merlin
Chief Administrative Law Judge

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