

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, NW
Suite 9500
Washington, DC 20001

April 15, 2003

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2002-52
Petitioner	:	A.C. No. 46-08593-03529
v.	:	
	:	
	:	
BAYLOR MINING, INC.	:	
Respondent	:	Jim’s Branch No. 3A

DECISION APPROVING SETTLEMENT

Appearances: Toye A. Olarinde, Esq., U.S. Department of Labor, Office of the Solicitor, Arlington, Virginia, for the Petitioner;
David J. Hardy, Esq, Spilman, Thomas & Battle, PLLC, Charleston, WV, for the Respondent.

Before: Judge Schroeder

This matter is before me on a Petition by the Secretary for the assessment of a Civil Penalty for the alleged violation of mine safety regulations. The Petition alleged three violations for which the Secretary proposed a total Civil Penalty of \$1,800.00.

Pursuant to notice, a hearing was convened in Charleston, West Virginia on April 2, 2003. Testimony was taken from the MSHA Inspector whose citation of violations began this case. During the testimony, I was advised that the parties had reached agreement on a settlement. Terms of the settlement were read into the record at the hearing. This order is intended to summarize, approve, and implement the terms of their agreement.

For the violation identified by Citation 7201627, it was agreed the allegation will be modified to a 104(a) citation with moderate negligence. The penalty to be paid will remain \$400.00. For the violation identified as Order 7201628, it was agreed the allegation will be modified to a 104(a) citation with high negligence. The penalty to be paid will remain \$500.00. For the violation identified as Order 7201633, it was agreed the allegation will be modified to a 104(a) citation with moderate negligence and restated to identify the violation as a failure to properly record an onshift examination. The penalty to be paid will remain \$900.00. The total Civil Penalty to be paid is \$1,800.00.

I have reviewed the settlement agreement of the parties and I find the agreement to be consistent with the Mine Safety Act and in the public interest. Therefore, it is

ORDERED that the joint motion of the parties to approve settlement is granted. The Respondent is directed to pay within 30 days of the date of this Order a Civil Penalty of \$1,800.00, upon the appropriate modification of the citation documents which formed the basis for this Petition. The parties are to bear their own costs, including any attorney fees. Upon receipt of the Civil Penalty directed by this Order, the Petition is **DISMISSED**.

Irwin Schroeder
Administrative Law Judge

Distribution:(Certified Mail)

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