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SOL (MSHA) V. ROBINSON-PHILLIPS COAL  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

Civil Penalty Proceeding

Docket No. HOPE 77-313-P  
A.O. No. 46-01659-02005V

v.

Angus No. 1 Mine

ROBINSON-PHILLIPS COAL CO.,  
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

Appearances: John H. O'Donnell, Trial Attorney, Office of the  
Solicitor, Department of Labor, Arlington, Virginia,  
for petitioner;  
Donald Lambert, Esq., Charleston, West Virginia, for  
respondent.

Before: Judge Koutras

This proceeding concerns a petition for assessment of civil penalty filed by the petitioner on September 12, 1977, pursuant to section 109(a) of the Federal Coal Mine Health and Safety Act of 1969, now section 110(a) of the 1977 Act, seeking a \$1,500 civil penalty assessment for one alleged violation of the provisions of 30 CFR 75.200, cited in section 104(c)(1) Notice No. 6-0043 (1 ATC), December 20, 1976. Petitioner has filed a motion pursuant to Commission Rule 29 CFR 2700.27(d), seeking approval of a proposed settlement, whereby respondent has agreed to payment of a civil penalty in the amount of \$500 in satisfaction of the violation.

In support of its motion for approval of the proposed settlement, petitioner has submitted proposed findings and conclusions with respect to the statutory criteria to be considered in the assessment of a civil penalty for a violation of any mandatory safety standard, and a factual discussion and analysis concerning the alleged violation.

Gravity, Negligence and Good Faith

This case involves an alleged violation on December 20, 1976, of the provisions of 30 CFR 75.200 in that the approved roof control plan was not being followed and the inspector observed along the

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active shuttle car roadways overhanging ribs and rocks which he considered to be loose. According to the notice of violation, this situation existed beginning at survey station No. 870 and through the connecting crosscuts to Nos. 3 and 4 entries and inby for a distance of approximately 40 feet in each entry. The respondent insists that the rocks and ribs were not loose and were taken down with considerable effort.

Respondent admits that as a matter of "good housekeeping" in the mine, the rocks should have been taken down, but it insists there was no danger to the miners. The roof in this mine is known as a "hard blue shale" which is an excellent mine roof which does not fall easily. The Assessment Office Narrative Statement (Govt. Exh. No. P-5) notes that the miners had to bend over because of the low roof, and the mine operator at a hearing would point out that this also means if a rock did fall from the roof it would have less distance to fall so it would do less damage than if it fell from a greater distance. The mine crew was small that day because the Christmas holidays were near and as a result they had failed to do a good housekeeping job in the mine by trimming the overhanging rocks. Respondent insists the condition was nonserious, however, the Office of the Solicitor considers it serious if the rocks were, in fact, loose. Petitioner asserts that the negligence is ordinary since the condition was observable and miners did pass by.

With respect to a showing of good faith on the part of respondent, a notice of abatement was issued the following day, thus indicating a normal degree of good faith.

#### Size of Business

Petitioner maintains that there is a limited present market for the quality of coal produced in the Angus No. 1 Mine, but that respondent can afford to pay any reasonable civil penalty for the subject violation without an adverse effect on its business. Eleven miners were employed at the Angus No. 1 Mine and the annual production for the company, as shown by MSHA records for the year 1976, was 3,483,827 tons.

#### Previous History

Petitioner has submitted a computer printout concerning respondent's prior history of violations for the period January 1, 1970, to September 20, 1976. During this period of time, respondent has paid assessments for 197 violations, 11 of which were for violations of 30 CFR 75.200. For the period of time noted, including respondent's size, I cannot conclude that this constitutes a significant prior history of violations.

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In addition to the elements of good faith, size of the respondent's mining operation, and the prior history of violations for which assessments have been paid, petitioner relies on the fact that the roof conditions in the mine in question are normally good and it is obvious to me that if the case were to go to an evidentiary hearing, respondent would advance the proposition that the roof in question was not loose and that the ribs and rocks were in fact taken down with considerable effort. Taking into account these factors, and the fact that the citation issued over 3 years ago and that the proposed assessment made by the Assessment Office was computed under a "special assessment" formula, I conclude that petitioner's proposals are reasonable and should be accepted.

ORDER

After careful consideration of the detailed factual and evidential analysis submitted by the petitioner in support of its motion, particularly with respect to the question of gravity, good faith compliance, and the respondent's size and history of prior violations, I conclude that petitioner's proposed civil penalty assessment is reasonable in the circumstances presented. Accordingly, the settlement is approved and respondent IS ORDERED to pay a civil penalty in the amount of \$500 for Violation No. 6-0043 (1 ATC), December 20, 1976, 30 CFR 75.200, within thirty (30) days of the date of this decision and order.

George A. Koutras  
Administrative Law Judge