

CCASE:  
SOL (MSHA) V. BIG HORN CONSTRUCTION  
DDATE:  
19860402  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 84-134-M  
A.C. No. 48-00155-05502 K28

v.

Docket No. WEST 85-170-M  
A.C. No. 48-00155-05503 AK 28

BIG HORN CONSTRUCTION CO.,  
BERNARD BANKS,  
BRUCE PARKER,  
JAMES WAGAMAN,  
RESPONDENTS

Docket No. WEST 85-171-M  
A.C. No. 48-00155-05504 A K28

Docket No. WEST 85-172-M  
A.C. No. 48-00155-05505 A K28  
(Consolidated)  
Alchem Mine

DECISION APPROVING SETTLEMENT

Before: Judge Morris

These consolidated cases are civil penalty proceedings initiated by the petitioner against the respondents pursuant to Section 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820.

Prior to a hearing the petitioner filed a motion seeking approval of a settlement agreement entered into by the parties.

1. The agreement reflects that at the time of the alleged violations respondent Big Horn Construction Company (Big Horn) was the corporate contractor-operator of the Alchem Mine, a trona mine in Sweetwater County, Wyoming. Further, respondent Bernard Banks (Banks) was acting as master mechanic at the mine and as agent for Big Horn; respondent Bruce Parker (Parker) was acting as foreman at the mine and as an agent for Big Horn; and respondent James Wagaman (Wagaman) was acting as project manager at the mine and as an agent for Big Horn.

2. In WEST 84-134-M respondent Big Horn is charged under section 110(a) of the Act, in Citation No. 2083234 and Order No. 2083235, with violating the mandatory safety standard published at 30 C.F.R. 57.14-36.

3. In WEST 85-170-M respondent Banks is charged under section 110(c) of the Act with knowingly authorizing, ordering, or carrying out the two foregoing violations as an agent of Big Horn.

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4. In WEST 85Ä171ÄM respondent Parker is charged under section 110(c) of the Act with knowingly authorizing, ordering, or carrying out the same two violations as an agent of Big Horn.

5. In WEST 85Ä172ÄM respondent Wagaman is charged with knowingly authorizing, ordering, or carrying out the same two violations as an agent of Big Horn.

6. The citations, the original assessments and the proposed dispositions for the violations of 30 C.F.R. 57.14Ä36 are as follows:

Respondent	Citation & Order Number	Assessment	Settlement
Big Horn	2083234	\$ 800	\$ 800
	2083235	1,000	1,000
Banks	2083234	500	375
	2083235	600	450
Parker	2083234	600	450
	2083235	700	525
Wagaman	2083234	700	525
	2083235	800	600

The proposed settlement constitutes a payment in full of the originally proposed civil penalties against Big Horn and a 25% reduction of the originally proposed civil penalties against the three individual respondents.

#### Discussion

In support of their proposed settlement the parties have submitted information relating to the statutory criteria for assessing civil penalties as set forth in 30 U.S.C. 820(i).

I have reviewed the proposed settlement and I find it is reasonable as well as in the public interest. The agreement should be approved.

Accordingly, I enter the following:

#### ORDER

1. The settlement agreement is approved.
2. Citation No. 2083234 and Order No. 2083235, as modified, are affirmed as to the respondents in all consolidated cases.
3. In WEST 84Ä134ÄM the proposed civil penalty of \$1,800 against respondent Big Horn is affirmed.
4. In WEST 85Ä170ÄM a civil penalty of \$825 is assessed against respondent Bernard Banks.

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5. In WEST 85Ä171ÄM a civil penalty of \$975 is assessed against respondent Bruce Parker.

6. In WEST 85Ä172ÄM a civil penalty of \$1,125 is assessed against respondent James Wagaman.

John J. Morris  
Administrative Law Judge