CCASE:

SOL (MSHA) V. MID RESOURCES

DDATE: 19870602 TTEXT: Federal Mine Safety and Health Review Commission Office of Administrative Law Judges

SECRETARY OF LABOR,

CIVIL PENALTY PROCEEDING

MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),

Docket No. WEST 87-21

PETITIONER

A.C. No. 05-03644-03534

v.

Coal Creek Prep Plant

MID-CONTINENT RESOURCES, INC.,

RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner; Edward Mulhall, Jr., Esq., Delaney & Balcomb, Glenwood Springs, Colorado, for Respondent.

Before: Judge Cetti

Statement of the Case

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (Mine Act"). The Secretary of Labor, on behalf of the Mine Safety and Health Administration, charges the operator of a coal mine with violating two safety regulations, 30 C.F.R. 77.400(a) which requires the guarding of moving machine parts, and 30 C.F.R. 77.1700 which prohibits working alone in hazardous conditions.

This proceeding was initiated by the Secretary with the filing of a proposal for assessment of a civil penalty. The operator filed a timely appeal contesting the existence of the alleged violations and the amount of the proposed penalties of \$6,000 and \$1,000 respectively.

Discussion

When this civil penalty proceeding was called for hearing on April 28, 1987, the parties announced upon the record that they had reached a settlement.

In Citation 2831741, counsel for the petitioner moved that the penalty be reduced from the \$6,000 originally proposed to \$1,000. Respondent, in turn, moved to withdraw its notice of contest.

Petitioner's motion was based on the fact that in preparing the case for hearing it was determined that the negligence in this case was not as high as originally assessed.

In Citation 2831742, counsel for the petitioner moved to vacate the citation. Respondent had no objection.

The motion to vacate Citation 2831742 was based on the fact that further study of the evidence revealed that a "hazardous condition" within the meaning of safety standard 30 C.F.R. 17.1700 did not exist.

Conclusion

After careful review and consideration of the pleadings, arguments, and the information placed upon the record at the hearing, I am satisfied that the proposed settlement disposition is reasonable, appropriate and in the public interest.

Accordingly, the motions made at trial are granted.

ORDER

- 1. Citation No. 2831741 is affirmed and respondent is ORDERED to pay a civil penalty of \$1,000\$ within 30 days from the date of this decision.
- 2. Good cause having been shown, Citation No. 2831742 and its related proposed penalty are vacated.

August F. Cetti Administrative Law Judge