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SOL (MSHA) V. EASTSIDE 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. WEST 88-77
A.C. No. 05-02421-03518

v.

Eastside Mine

EASTSIDE COAL COMPANY, 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

This case is before me upon a petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges the operator of the Eastside Mine with violating two safety regulations of 30 C.F.R. 70.508 and 49.38 and with a failure to abate these violations. MSHA issued two 104(a) Citations and later two 104(b) Orders for failure to abate the violations.

The operator filed a timely appeal contesting the existence of the alleged violations and raising five affirmative defenses. The case was set for hearing on the merits at the same place and time as other cases involving the parties were heard on the merits. At the hearing, the parties advised they had reached settlements resolving all issues and were prepared to make their recommendations on the record.

Eastside is a small underground coal mining operation. It is developing a coal seam situated in the Grand Hotback, near the town of Silt, Garfield County, Colorado. It employees five (5) persons.

Citation/Order No. 9996145 involved an alleged failure to have qualified or certified personnel take noise samples. In preparing the case for trial the Secretary found the original 104(a) citation was valid but that there was insufficient evidence to go forth with the 104(b) order issued for the alleged failure to abate. The parties agreed and jointly moved that the Secretary be permitted to vacate the 104(b) order and with respect to the 104(a) citation amend the proposed penalty (which was a combination penalty for the citation and the order) from \$170.00 to \$85.00. The motions with respect to citation/order No. 9996145 were granted and respondent with approval of the court withdrew its notice of contest to the citation and its related amended penalty.

With respect to Citation/Order No. 3043534 the parties jointly moved to vacate the 104(b) order, leaving in place the 104(a) citation, and to amend the proposed penalty for the citation and order from \$255.00 to \$128.00. This reduced penalty relates solely to the 104(a) citation. The Secretary's counsel stated for the record that the 104(a) citation was appropriate but on review of the evidence it was determined that the 104(b) order was not. Respondent withdrew his contest to the citation and its related amended penalty.

I accept the representation of counsel that there is insufficient evidence to establish the failure to abate Order Nos. 3044011 and 3044012 and grant the motion to vacate said orders. I conclude that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Act.

Accordingly, the joint motion for approval of the settlement made at the hearing is granted, the settlement is approved and respondent is ordered to pay the sum of \$213.00 within 40 days of the date of this Order.

August F. Cetti
Administrative Law Judge