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SOL (MSHA) V. MID-CONTINENT RESOURCES
DDATE:
19890104
TTEXT:

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 PROCEEDINGS

Docket No. WEST 88-121
A.C. No. 05-00301-03629

v.

Docket No. WEST 88-122
A.C. No. 05-00301-03630

MID-CONTINENT RESOURCES,
INC.,
RESPONDENT

Docket No. WEST 88-123
A.C. No. 05-00469-03642

Docket No. WEST 88-124
A.C. No. 05-00469-03643

Dutch Creek No. 1 and No. 2
Mines

ORDER GRANTING SECRETARY'S MOTION

Respondent, Mid-Continent, has indicated, in these and other proceedings, that it wishes to establish by evidence, including statistical data, that the enforcement documents (Orders and Citations) issued by the Secretary are examples of and the products "of a pattern of harassment and enforcement abuse by MSHA directed at Mid-Continent."(FOOTNOTE 1) This issue is for convenience being referred to as the "abuse" issue.

Petitioner, the Secretary, in a Motion in Limine filed on November 29, 1988, seeks to have an order issued prohibiting Respondent from submitting evidence on both the "abuse" issue and on the issue relating to its alleged failure to follow its own regulations in proposing penalties. Both parties have submitted briefs in support of their positions.

In Docket No. WEST 89-3-R, Judge John J. Morris determined that the Commission does not have jurisdiction to review alleged abuse of discretion by the Secretary in enforcing the Mine Safety Act at Respondent's Dutch Creek Mine and granted the Secretary's motion to dismiss Respondent's "broad allegation of alleged abuse. . . ". Having carefully considered the arguments and authorities presented by the parties on this issue. I am in full accord with the views and holdings of Judge Morris expressed in

