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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 88-233
A.C. No. 42-01211-03544

v.

Trail Mountain #9 Mine

BEAVER CREEK COAL COMPANY,
RESPONDENT

DECISION

Appearances: Robert J. Murphy, Esq., John J. Matthew, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Denver, Colorado, for Petitioner;
Charles W. Newcom, Esq., Sherman & Howard, Denver,
Colorado,
for Respondent;
David M. Arnolds, Esq., Atlantic Richfield Company,
Denver, 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 "Act". The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charged the operator of the Beaver Creek Coal Company, Trail Mountain Mine #9 (Beaver Creek) with violating three safety regulations of Title 30 Code of Federal Regulations.

The operator filed a timely appeal contesting the existence of the alleged violations and the appropriateness of the proposed penalties.

The case was set for hearing on the merits at the same place and time as other cases involving the same parties were heard on the merits. At the hearing counsel for the Secretary on the record stated the parties had reached an agreement and the parties jointly moved for approval of the proposed settlement disposition which provides as follows:

Citation No. 3224935

This citation alleges a violation of 30 C.F.R. 75.316. Beaver Creek moved to be permitted to withdraw its contest and pay in full the Secretary's proposed penalty of \$20.00.

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Order No. 3224936

The Order alleges a violation of 30 C.F.R. 75.316. The Secretary moved to redesignate this 104(b) Order to a Section 104(a) - S & S Citation. Beaver Creek Coal Company agreed to withdraw its contest to the newly designated Section 104(a) S&S-Citation and pay the new proposed penalty of \$100.00.

Citation No. 3227100

The citation alleges a violation of 30 C.F.R. 75.902. The Secretary moves to vacate this citation and its related proposed penalty due to an insufficiency of evidence.

Discussion

There was no objection to the motions of the parties. The motions are granted. In support of this proposed disposition of the case the parties submitted information pertaining to the six statutory civil penalty criteria found in section 110(i) of the Act. After careful review and consideration of the pleadings, arguments, and submissions I find that the proposed disposition is reasonable, appropriate, and in the public interest.

ORDER

The joint motion for approval of the agreed settlement disposition is granted. The respondent is directed to pay a civil penalty in the sum of \$120.00 within 30 days of the date of this decision.

August F. Cetti
Administrative Law Judge