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

v.

Dutch Creek No. 1 Mine

MID-CONTINENT RESOURCES, INC.,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Lasher

Upon motion for approval of a proposed settlement of the 16 Citations and Orders originally involved, and the same appearing proper and fully supported in the record, the settlement is approved.

A summary of the agreement reached follows:

| Citation/Order No. | Proposed<br>Penalty | Amended<br>Proposed Penalty |
|--------------------|---------------------|-----------------------------|
| 3043587            | \$1,400.00          | \$1,400.00                  |
| 3043593            | 1,300.00            | 780.00                      |
| 3044798            | 1,100.00            | 1,100.00                    |
| 3944799            | 1,350.00            | 810.00                      |
| 2504970            | 1,300.00            | 500.00 (104a)               |
| 2832602            | 1,000.00            | 250.00                      |
| 2832603            | 1,000.00            | 250.00                      |
| 2503932            | 1,100.00            | 1,100.00                    |
| 2503864            | 1,000.00            | 1,000.00                    |
| 2503867            | 1,300.00            | 1,300.00                    |
| 2503868            | 1,000.00            | 600.00                      |
| 2503869            | 900.00              | 500.00 (104a)               |
| 2334828            | 1,100.00            | 660.00                      |
| 2334829            | 1,200.00            | 0.00 (vacated)              |
| 2334830            | 1,100.00            | 340.00                      |
| 2503874            | 1,000.00            | 300.00                      |

As part of the overall settlement, Respondent Mid-Continent agrees to withdraw all defenses in all pending cases, specifically as to the "MSHA enforcement abuse" issue.

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The above settlement actually reflects and incorporates various agreements reached at formal hearing in March, 1989.

Thus, as to two 104(d)(2) Orders listed below, MSHA agreed at the hearing (1) that such did not result from the mine operator's "unwarrantable failure" to comply with the pertinent standard, (2) that such should be modified to 104(a) Citations, and (3) that the penalties should be reduced from the original assessments as follows:

| Section/Order No.                    | Modification          | Original Assessment | Agreed Penalty |
|--------------------------------------|-----------------------|---------------------|----------------|
| 104(d)(2) Order<br>Order No. 2503869 | To 104(a)<br>Citation | \$ 900.00           | \$500.00       |
| 104(d)(2)<br>Order No. 2504970       | To 104(a)<br>Citation | \$1,300.00          | 500.00         |

As to two 104(a) Citations, numbered 2832602 and 2832603, since neither violation was charged to be "significant and substantial" or considered serious, Petitioner at the hearing agreed to penalty reductions for both from \$1,000.00 to \$250.00.

Also at the hearing, Petitioner, after a re-evaluation of its case, withdrew its prosecution of Section 104(d)(2) Order No. 2334829, and moved to vacate such. Such motion was granted on the record, is reflected in the written settlement motion, and is here affirmed.

ORDER

1. Withdrawal Orders numbered 2503869 and 2504970 are modified to 104(a) Citations and withdrawal Order No. 2334829 is vacated.

2. Respondent, if it has not previously done so, is ordered to pay to the Secretary of Labor on or before October 1, 1989, the sum of \$10,890.00 as and for the civil penalties agreed on and above assessed.

Michael A. Lasher, Jr.  
Administrative Law Judge