

CCASE:
SOL (MSHA) V. MID-CONTINENT RESOURCES
DDATE:
19891030
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 PROCEEDING

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

v.

Dutch Creek No. 2 Mine

MID-CONTINENT RESOURCES, INC.,
RESPONDENT

DECISION

Appearances: Margaret A. Miller, 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 Lasher

This matter arose pursuant to Section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. Section 820(a) (herein the Act). Petitioner originally sought assessment of penalties for 20 alleged violations cited in 20 enforcement documents (Orders and Citations) involved in this docket.

A prehearing conference was held in this matter and in related dockets WEST 88-121, 122 and 124 on November 2, 1988, in Denver, Colorado. Thereafter, hearings were held in various of these latter dockets and prior to decision the parties reached amicable resolution thereof.

In this docket, pursuant to my Decision Approving Partial Settlement in August, 1989, the parties' settlement of 18 of the 20 enforcement documents involved was approved, leaving Order No. 3044101 and Citation No. 3044102 to be resolved. On October 28, 1989, the parties submitted their Joint Motion to Approve Settlement and Order Payment as to these last two violations involved, the terms of which are:

Citation/Order No.	Proposed Penalty	Amended Proposed Penalty (Amended to 104(a) Citation)
3044101 - 104(d)(1)	\$1,500.00	\$900.00
3044102 - 104(a)	1,300.00	780.00

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It is noted that this agreement is part of an overall agreement by the parties involving approximately 2,000 Citations and Orders issued from September, 1987, through March 31, 1989. The Joint Motion of the parties appears proper and is strongly supported in the record on the basis of policy and enforcement considerations, and economic factors relevant to both parties. Accordingly, the Joint Motion is approved and the agreed-on penalties here assessed.

ORDER

1. Order No. 3044101 is MODIFIED to reflect its nature and issuance authority from a Section 104(d) Withdrawal Order to a Section 104(a) Citation.
2. Respondent is ordered to pay to the Secretary of Labor on or before January 1, 1991, the total sum of \$1,680 as and for the civil penalties above assessed.
3. This proceeding is DISMISSED.

Michael A. Lasher, Jr.
Administrative Law Judge