

CCASE:  
SOL (MSHA) V. TANKS UNLIMITED  
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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. LAKE 89-79  
A.C. No. 12-00332-03501

v.

Minnehaha Mine

TANKS UNLIMITED, INCORPORATED,  
RESPONDENT

DECISION

Appearances: Miguel J. Carmona, Esq., U.S. Department of Labor,  
Office of the Solicitor, Chicago, Illinois, for the  
Petitioner;  
Henry Y. Dein, Esq., Indianapolis, Indiana, for the  
Respondent.

Before: Judge Maurer

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).

Pursuant to notice, a hearing was convened in Indianapolis,  
Indiana on January 3, 1990. At that hearing, the respondent, by  
counsel, admitted all the allegations contained in the petition  
with regard to Citation Nos. 3038257 and 3038259, including the  
fact of violation and all the special findings that the inspector  
included in the two citations.

The remainder of the hearing concerned the financial status  
of the corporation as it exists at this time. Mr. Leroy Dunkin,  
the President of the corporation, was called and testified to the  
effect that because of the two accidental deaths involving the  
company since 1987, including the one herein involved, the  
corporation is out of business and broke.

As a result of the earlier fatal accident, criminal  
proceedings were instituted against both the corporation and Mr.  
Dunkin, personally. As a result of those proceedings, the  
corporation, through its officers, entered a plea of guilty and a

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\$13,500 fine was paid. The legal expenses of that proceeding approached \$80,000, for both the corporation and its officers, exhausting the corporate treasury. Approximately \$500 is left at the present time.

The settlement of this case that the parties proposed was that respondent would pay the \$500 civil penalty that has been assessed for Citation No. 3038257 in its entirety out of the remainder of the corporate assets and that an additional \$500 of the \$3000 assessed for Citation No. 3038259 would be paid by Mr. Dunkin, personally.

I approved that motion at the hearing and pursuant to the Rule of Practice before this Commission, this written decision confirms the bench decision I rendered at the hearing, approving the settlement.

WHEREFORE IT IS ORDERED that the respondent, and by agreement, Mr. Leroy Dunkin, personally, are responsible for and shall pay the approved civil penalty of \$1000 within 30 days of this decision. Upon receipt of payment in full by the Secretary, this case is dismissed.

Roy J. Maurer  
Administrative Law Judge