

CCASE:
ENERGY FUELS COAL V. SOL (MSHA)
DDATE:
19900313
TTEXT:

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

ENERGY FUELS COAL, INC.
CONTESTANT

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

CONTEST PROCEEDINGS

Docket No. WEST 89-237-R
Citation No. 3077172; 5/2/89

Docket No. WEST 89-239-R
Citation No. 3077170; 5/2/89

Docket No. WEST 89-240-R
Citation No. 3077169; 5/2/89

Docket No. WEST 89-243-R
Citation No. 3077166; 4/27/89

Docket No. WEST 89-245-R
Citation No. 3077164; 4/27/89

Docket No. WEST 89-248-R
Citation No. 3077161; 4/25/89

Docket No. WEST 89-249-R
Citation No. 2875340; 4/25/89

Docket No. WEST 89-250-R
Citation No. 2875339; 4/25/89

Docket No. WEST 89-252-R
Citation No. 2875337; 4/25/89

Docket No. WEST 89-254-R
Citation No. 2875335; 4/25/89

Southfield Mine
Mine I.D. 05-03455

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

ENERGY FUELS COAL, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEST 89-435
A.C. No. 05-03455-03572

Southfield Mine

DECISION APPROVING PARTIAL SETTLEMENT

Appearances: Phillip D. Barber, Esq., Welborn, Dufford, Brown & Tooley, Denver, Colorado, for Contestant/Respondent; Margaret A. Miller, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner/Respondent

Before Judge Lasher:

At an on-the-record prehearing conference in Denver, Colorado, on February 14, 1990, the parties reached a settlement resolving 10 of the 20 Citations involved in Penalty Docket WEST 89-435 each of which Citations is the subject of a separate Contest proceeding as reflected in the caption. As part of the settlement reached, as to all 10 Citations, which settlement was approved from the bench at hearing, Contestant/Respondent Energy Fuels Coal, Inc. (herein Energy Fuels) agreed to the withdrawal of its Notice of Contest in each of the related Contest proceedings and to the dismissal of such proceedings (T. 6,7, 8-25).

As to 5 of the 10 Citations, Energy Fuels agreed to pay in full MSHA's proposed penalty assessments. As to the remaining 5 Citations, the penalty reductions reflected in the schedule below were based on re-evaluation of the degree of gravity of such violations and MSHA's agreement to mollify its original penalty appraisals thereof.

Citation No.	Contest Docket No.	Initial Agreement	Agreed Penalty
3077172	WEST 89-237-R	\$79	\$79
3077170	WEST 89-239-R	79	40
3077169	WEST 89-240-R	79	40
3077166	WEST 89-243-R	126	63
3077164	WEST 89-245-R	85	45
3077161	WEST 89-248-R	79	79
2875340	WEST 89-249-R	147	75
2875339	WEST 89-250-R	20	20
2875337	WEST 89-252-R	20	20
2875335	WEST 89-254-R	20	20

ORDER

1. The penalties agreed to by the parties in the total sum of \$481 as set forth hereinabove are here assessed and Energy Fuels shall pay the same to the Secretary of Labor within 30 days from the date hereof if it has not previously done so.

2. Citation No. 3077170 is modified to delete the "Significant and Substantial" designation thereon; Citation No. 3077169 is modified to delete the "Significant and Substantial" designation thereon; Citation No. 3077166 is modified to delete the "Significant and Substantial" designation thereon; Citation No. 3077161 is modified to delete the "Significant and Substantial" designation thereon; Citation No. 2875340 is modified to change Paragraph 10D thereof to reflect that "6" persons were affected by the violation rather than "10;" Citations numbered 2875339, 2875337 and 2875335 are modified to change Paragraph 9C thereof to charge a violation of 30 C.F.R. 75.1103-8(b) rather than 30 C.F.R. 75.1103-8(a) and to change Paragraph 8 thereof to reflect the gravamen of the violation described to be that there was no record of the required inspections having been made, rather than that such inspections had not actually been made.

3. Contest Dockets numbered WEST 89-237-R, 239-R, 240-R, 243-R, 245-R, 248-R, 249-R, 250-R, 252-R and 254-R are dismissed.

Michael A. Lasher, Jr.
Administrative Law Judge