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SOL (MSHA) V. BLUE RANGE MINING
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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 89-425-M
A.C. No. 04-05021-05501

v.

Darwin UG

BLUE RANGE MINING COMPANY,
L.P.,
RESPONDENT

DECISION

Appearances: George B. O'Haver, Esq., Office of the Solicitor,
U.S. Department of Labor, San Francisco, California
R.D. Haddock, HOLME ROBERTS & OWEN, Salt Lake City,
Utah,
for Respondent.

Before: Judge Lasher

This proceeding was initiated by the filing of a proposal
for assessment of civil penalty by Petitioner on October 2, 1989,
pursuant to Section 110(a) of the Federal Mine Safety and Health
Amendments Act of 1977, 30 U.S.C. 801, et seq.

At the outset of hearing on May 23, 1990, the parties
entered negotiations and ultimately announced their amicable
resolution of the issues arising out of the four enforcement
documents (three withdrawal orders and one citation). Pursuant to
their agreement, and upon further review and re-evaluation by
Petitioner, various modifications of the four enforcement
documents (described in my order below) are to be made which,
because of their mollification of the original evaluations of the
penalty assessment factor of gravity as to each violation, result
in reductions in the penalties originally and administratively
assessed by Petitioner. The settlement agreement was proposed and
considered on the record at the hearing and my bench decision
approving such is here affirmed.

ORDER

1. Withdrawal Order No. 3463394 is MODIFIED to change the
"Gravity" of the violation described in Section 10.A. of the
Order from "Highly Likely" to "Unlikely," to change the degree of
"Negligence" involved appearing in paragraph 11 of the Order from
"Moderate" to "Low," and to delete the "Significant and
Substantial" designation of the violation appearing at paragraph
10.C. of the Order. A penalty of \$50 is assessed for this
violation.

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2. Citation No. 3463395 is MODIFIED to change the degree of "Negligence" involved from "Moderate" to "Low." A penalty of \$55 is assessed for this violation.

3. Withdrawal Order No. 3463396 is MODIFIED to change the degree of Negligence involved from "Moderate" to "Low." A penalty of \$300 is assessed.

4. Withdrawal Order No. 3463398 is MODIFIED to change the "Gravity" Designation from "Highly Likely" to "Unlikely," to change the degree of Negligence involved from "Moderate" to "Low," and to delete the "Significant and Substantial" designation of the violation appearing in the Order. A penalty of \$50 is assessed.

5. Respondent, if it has not previously done so, shall pay to the Secretary within 30 days from the date hereof the sum of \$455 as and for the civil penalties agreed to and above assessed.

Michael A. Lasher, Jr.
Administrative Law Judge