

CCASE:  
ENERGY FUELS COAL V. SOL (MSHA)  
DDATE:  
19910117  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
The Federal Building  
Room 280, 1244 Speer Boulevard  
Denver, CO 80204

ENERGY FUELS COAL, INC.,  
CONTESTANT  
v.

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

CONTEST PROCEEDINGS

Docket No. WEST 89-283-R  
Citation No. 3298277; 5-11-89

Docket No. WEST 89-284-R  
Citation No. 3298276; 5-11-89

Docket No. WEST 89-285-R  
Citation No. 3298275; 5-11-89

Docket No. WEST 89-286-R  
Citation No. 3298274; 5-11-89

Docket No. WEST 89-287-R  
Citation No. 3298273; 5-11-89

Docket No. WEST 89-305-R  
Citation No. 2875247; 5-11-89

Docket No. WEST 89-309-R  
Order No. 2875243; 5-11-89

Docket No. WEST 89-311-R  
Citation No. 2875241; 5-11-89

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 PROCEEDINGS

Docket No. WEST 89-449  
A.C. No. 05-03455-03569

Southfield Mine

DECISION and ORDER TO PAY  
and  
DISMISSAL OF CONTEST PROCEEDINGS

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 Cetti

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges respondent with violating safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq. (the "Act").

After notice to the parties, a hearing commenced in Denver, Colorado, on December 18, 1990.

At the hearing, the parties announced they had reached an amicable settlement of all issues not previously settled.

The citations, the original assessments, and the proposed disposition of all matters in controversy are as follows:

Citation Number	Contest Case Number	Proposed Penalty	Modification & Disposition
3298277	WEST 89-283-R	\$170	Non S&S \$170
3298276	WEST 89-284-R	\$170	Vacated
2875247	WEST 89-305-R	\$ 79	Non S&S \$ 50
2875243	WEST 89-309-R	\$ 79	\$ 79
2875241	WEST 89-311-R	\$ 79	Non S&S \$ 50

Pursuant to their settlement agreement, the Secretary moves to amend Citation Nos. 3298277, 2875241, and 2875247 to delete the characterization "significant and substantial." Based on the fact on review, the Secretary finds the violations alleged therein do not contribute significantly and substantially to the cause and effect of a mine safety or health hazard and there is insufficient evidence to prove otherwise.

The parties advise that Contest Proceeding Nos. WEST 89-285-R, WEST 89-286-R, and WEST 89-287-R, involving respective Citation/Order Nos. 3298275, 3298274, and 3298273 carry no penalties. Energy Fuels Coal, Inc., agrees to withdraw its contest filed in each of these dockets. Consequently, these three contest proceedings, along with all the above-captioned contest proceedings, are dismissed pursuant to the proposed settlement agreement.

The settlement was considered under the statutory criteria for civil penalties in section 110(i) of the Act. I find the settlement is reasonable and in the public interest. It is APPROVED.

ORDER

1. Citation Nos. 3298277, 2875241, and 287247 are MODIFIED to delete the "Significant and Substantial" designations thereon and, as so modified, are AFFIRMED.

2. Citation No. 2875243 is AFFIRMED.

3. Citation No. 3298276 is VACATED.

4. Contest Proceedings Docket Nos. WEST 89-283-R, WEST 89-284-R, WEST 89-305-R, WEST 89 309-R, WEST 89-311-R, WEST 89-285-R, WEST 89-286--R, and WEST 89-287-R are DISMISSED.

5. The penalties agreed to by the parties in the total sum of \$349 are here ASSESSED and Energy Fuels Coal, Inc., is ORDERED to pay the same to the Secretary of Labor within 30 days from the date of this Decision. Upon said payment, Civil Penalty Proceeding Docket No. WEST 89-449 is DISMISSED.

August F. Cetti  
Administrative Law Judge