

CCASE:
ENERGY FUELS COAL V. SOL (MSHA)
DDATE:
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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 RUELS COAL, INC.,
Contestant

v.

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

SECRETARY OF LABOR,
SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner

v.

ENERGY FUELS COAL, INC.
Respondent

CONTEST PROCEEDINGS

Docket No. WEST 89-304-R
Order No. 2930823; 5-11-89

Docket No. WEST 89-308-R
Order No. 2875244; 5-11-89

Southfield Mine
Mine I.D. 05-03455

CIVIL PENALTY PROCEEDING
Docket No. WEST 89-437-A

A.C. No. 05-03455-03574
Southfield Mine

DECISION
ORDER TO PAY
DISMISSAL

Appearances: Phillip D. Barber, Esq., John S. Cowan, 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 Respondent/Petitioner.

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.

Contest Proceeding No. 89-308-R

Order No. 2875244 in this docket was issued to Respondent as a Section 104(d)(1) order for a violation of 30 C.F.R. 75.400 because loose coal and coal dust were allegedly permitted to accumulate under the Long Airdox coal feeder and the tail pulley of the 2 north belt conveyor in piles ranging from six to eight inches, for a distance of about six feet.

At the hearing, the Secretary moved to amend the order to a 104(a) citation with a \$500.00 penalty, and Energy Fuels agreed to withdraw its objection to the amended citation and penalty.

Contest Proceeding No. 89-304-R

Order No. 2930823 in this docket is a Section 104(d)(1) Order with a proposed penalty of \$850.00 in the civil penalty docket. This order was issued to Respondent for the alleged violation of 30 C.F.R. 75.220 because the approved roof-control plan was not being complied with in the 1 right entry on the 2d south 003 section. The plan required that, when heads or roof-bolt supports are dislodged or sheared off, additional supports are to be installed to provide adequate support of the mine roof.

MSHA charged that additional roof supports were not installed in the roof area in the 1 right entry, where roof-bolt supports had been sheared off or pulled down by the mining equipment. The affected area in the 1 right entry started at the intersection and extended inby for a distance of about 30 feet. MSHA contends the mine roof was not being adequately supported to protect the miners in the area from falls-of-the-roof.

At the hearing, Energy Fuels agreed to withdraw its contest and any objection to the Order as written and to the \$850.00 proposed penalty.

The parties, with the approval of the undersigned Judge, agreed that the order is deemed effective as of the date it was written and not as of the date of the settlement. The mine has gone through a clean unwarrantable failure cycle since the order was issued, and therefore it is deemed effective as of the date of its issue to ensure this settlement does not trigger a new cycle.

Thus, the Order No. 2930823 in this contest case, the original assessments, and the proposed disposition of all matters in controversy are as follows:

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Order Number	Contest Case No.	Proposed Penalty	Modification & Disposition
2875244	WEST 89-308-R	\$650.00	104(a) \$ 500.00
2930823	WEST 89-304-R	\$850.00	104(d)(1) 850.00
TOTAL			\$1,350.00

I have considered the proposed settlement disposition of this matter. I find the proposed settlement is reasonable, consistent with the Act, and in the public interest. The settlement disposition should be and is APPROVED.

ORDER

1. Order No. 2875244 is MODIFIED to change the type of action from a 104(d)(1) Order to a 104(a) Citation, and, as so modified, is AFFIRMED. A civil penalty of \$500.00 is ASSESSED.

2. Order No. 2930823, with its finding that the violation is "Significant and Substantial" is AFFIRMED. A civil penalty of \$850.00 is ASSESSED|.

3. Contest Proceeding Docket Nos. WEST 89-308-R and WEST 89-304-R are DISMISSED.

4. Respondent Energy Fuel Coal Inc. is ORDERED to pay to the Secretary of Labor the sum of \$1,350.00 within 30 days of the date of this decision, as and for the civil penalties assessed herein. Upon such payment, this proceeding is DISMISSED.

August F. Cetti
Administrative Law Judge