

CCASE:  
SOL (MSHA) v. ENERGY FUELS COAL  
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

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

CIVIL PENALTY PROCEEDINGS  
Docket No. WEST 89-433  
A.C. No. 05-03455-03570

v.

Southfield Mine

ENERGY FUELS COAL,  
INCORPORATED,  
RESPONDENT

DECISION

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 in the 11 remaining citations in this docket.

At the hearing, the Secretary's counsel moved to modify Citation Nos. 3077189, 3077190, 3077191, and 3977192, to delete the "significant and substantial" characterization of the violations on the grounds that there was insufficient evidence to prove the violations were "significant and substantial" and to reduce the proposed civil penalties of each of the four citations to \$50 each, as indicated in the summary table below.

The Secretary was permitted to amend Item 10 D of Citation Nos. 3077185 and 3077187 to show in each citation that the "number of persons affected" was two (2) rather than ten (10), and to reduce the proposed penalty in each of the two citations from \$147 to \$100, as indicated in the summary table below. The other five

citations and their proposed penalties were not amended or modified. Respondent withdrew its contest as to these five citations and agreed to pay the Secretary's original proposed penalties in the amounts indicated in the summary table below.

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

SUMMARY TABLE

Citation Number	30 C.F.R.	Proposed Penalty	Disposition
2931193	75.208	\$105.00	\$105.00
2931194	75.400	\$112.00	\$112.00
3077174	75.400	\$ 85.00	\$85.00
3077184	75.1722(a)	\$ 79.00	\$ 79.00
3077185	75.1707	\$147.00	\$100.00
3077186	75.400	\$126.00	\$126.00
3077187	75.202(a)	\$147.00	\$100.00
3077189	75.1723(a)(2)	\$ 79.00	\$ 50.00
3077190	75.400	\$ 85.00	\$ 50.00
3077191	75.400	\$ 79.00	\$ 50.00
3077192	75.1725(a)	\$ 79.00	\$ 50.00

The settlement disposition was considered in light of the statutory criteria in section 110(i) of the Act, and the parties' representation as to lack of sufficient evidence in specified cases. I find the settlement is reasonable and in the public interest. It is APPROVED.

ORDER

1. Citation Nos. 3077189, 3077190, 3077191, and 3077192 are modified to delete the characterization "significant and substantial" and, as so modified, are AFFIRMED.
2. Citation Nos. 2931193, 2931194, 3077174, 3077184, 3077186 are AFFIRMED.
3. Citation Nos. 3077185 and 3077187 are amended to show in item 10 D of each citation that the number of persons affected is two (2) rather than twelve (12) and, as so modified, are AFFIRMED.
4. The civil penalties agreed to by the parties, as specified in the summary table above totaling \$907.00, are ASSESSED.

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5. Respondent Energy Fuels Coal Inc. is ORDERED to pay to the secretary of Labor the sum of \$907.00 as and for the civil penalties assessed herein. Upon such payments, this proceeding is DISMISSED.

August F. Cetti  
Administrative Law Judge