

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

March 8, 1991

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

v.

ZEIGLER COAL COMPANY,
Respondent

: CIVIL PENALTY PROCEEDING
:
: Docket No. LAKE 91-2
: A. C. No. 11-00586-03642
:
: Murdock Mine

DECISION

Before: Judge Merlin

Pursuant to an order previously entered in this matter, the above-captioned docket number now contains only Citation No. 03406060 which presents the issue of the validity of the Secretary's instructions regarding "excessive history" which are to be followed in proposing penalties under the Mine Act.

The briefs and motions filed in the instant case on this issue are virtually identical to those filed in Drummond Company Inc., Docket No. SE 90-126. On March 6, 1991, a decision was rendered in Drummond.

In accordance with the decision in Drummond, it is hereby ORDERED that the operator's motion to remand be GRANTED and that the Secretary RECALCULATE the proposed penalty without reference to Program Policy Letter No. P90-III-4.



Paul Merlin
Chief Administrative Law Judge

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