

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

THE FEDERAL BUILDING

1244 SPEER BOULEVARD 1260

DENVER, CO 602044562

(303) 644-5266 | FTS 564-5266

May 21, 1992

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 91-404
Petitioner : A.C. No. 05-00301-03768
 :
v. : Dutch Creek Mine
 :
MID-CONTINENT RESOURCES :
INCORPORATED, :
Respondent :

AMENDMENT OF DECISION

Appearances: Margaret A. Miller, Esq., **Tambra** Leonard, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Denver, Colorado,
for Petitioner;
Edward Mulhall, Jr., DELANEY & BALCOMB, P.C.,
Glenwood Springs, Colorado,
For Respondent.

Before: Judge Morris

Pursuant to Commission Rule **65(c)**, 29 C.F.R. § 2700.65(c),
the Judge strikes paragraph 3 of the Order entered in the **Caption**
Decision and inserts a new paragraph 3.

A two-page "Amended Decision" is attached hereto.


John J. Morris
Administrative Law Judge

Distribution:

Margaret A. Miller, Esq., **Tambra** Leonard, Esq., Office of the
Solicitor, U.S. Department of Labor, 1585 Federal Office
Building, 1961 Stout Street, Denver, CO 80294

Edward Mulhall, Jr., Esq., DELANEY & BALCOMB, Drawer **790**,
Glenwood Springs, CO 81602

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

THE FEDERAL BUILDING
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
(303) 844-5266 / FTS 564-5266

May 21, 1992

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 91-404
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MID-CONTINENT RESOURCES	:	
INCORPORATED,	:	
Respondent	:	

AMENDED DECISION

Appearances: Margaret A. Miller, Esq., **Tambra** Leonard, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Denver, Colorado,
for Petitioner;
Edward **Mulhall**, Jr., DELANEY & BALCOMB, P.C.,
Glenwood Springs, Colorado,
For Respondent.

Before: Judge Morris

This is civil penalty proceeding initiated by Petitioner against Respondent pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, et seq. (the "Act"). The civil penalties sought here are for the violation of mandatory regulations promulgated pursuant to the Act.

A hearing in this **case** and related cases was held in **Glenwood** Springs, Colorado, on February 26, 1992. The parties reached an amicable settlement on the record and subsequently filed a written Joint Motion to Approve Settlement.

Respondent further filed a suggestion of bankruptcy.

The Citations, the original assessments, and the proposed dispositions are as follows:

<u>Citation No.</u>	<u>Proposed Penalty</u>	<u>Amended Proposed Penalty</u>
3410472	\$276.00	\$166.00
2931613	\$240.00	\$144.00

In support of their motion, the parties submitted information relating to the statutory criteria for assessing civil penalties as contained in 30 U.S.C. **§ 820(i)**.

I have reviewed the proposed settlement and I find it is reasonable and in the public interest. It should be approved.

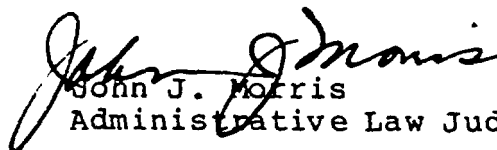
Accordingly, I enter the following:

ORDER

1. **The** order of consolidation entered on March 2, 1992, is DISSOLVED.

2. The above Citations and amended penalties are AFFIRMED.

3. Respondent filed a case under Chapter 11 of the Bankruptcy Code and is operating its bankruptcy estate as a **debtor-in-possession**. Accordingly, upon approval of the United States Bankruptcy Court in Case No. 91-11658 PAC, it is ORDERED that civil penalties will be assessed against the Respondent in the amount of \$310 and Petitioner is authorized to assert such assessment as a claim in Respondent's Bankruptcy Case.


John J. Morris
Administrative Law Judge

Distribution:

Margaret A. Miller, Esq., **Tambra** Leonard, Esq., Office of the Solicitor, U.S. Department of Labor, 1585 Federal Office Building, 1961 Stout Street, Denver, CO 80294

Edward Mulhall, Jr., Esq., DELANEY & BALCOMB, Drawer 790, **Glenwood** Springs, CO 81602

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