

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 | Frs 564-5266

May 21, 1992

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 91-470
Petitioner : A.C. No. 05-00301-03770
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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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>
3410412	\$ 20.00	\$ 20.00
3410415	\$ 20.00	\$ 20.00
3410392	\$ 20.00	\$ 20.00
9996551	\$147.00	\$ 88.00
3241264	\$ 20.00	\$ 20.00
3586355	\$119.00	\$ 71.00
3586278	\$198.00	\$119.00

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 \$358 and Petitioner is authorized to assert such assessment as a claim in Respondent's Bankruptcy Case.


John J. Morris
Administrative Law Judge

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

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