

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 91-471 |
| Petitioner | : | A.C. No. 05-00301-03771 |
| | : | |
| 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 4 of the Order entered in the Caption Decision and inserts a new paragraph 4.

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

ek

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 91-471 |
| Petitioner | : | A.C. No. 05-00301-03771 |
| | : | |
| v . | : | Dutch Creek Mine |
| | : | |
| MID-CONTINENT RESOURCES | : | |
| INCORPORATED, | : | |
| Respondent | : | |

AMENDED DECISION

Appearances: Margaret A. Miller, Esq., Tandra 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> |
|---------------------|-------------------------|---------------------------------|
| 3586432 | \$20.00 | Vacate |
| 9996593 | \$20.00 | \$20.00 |
| 9996594 | \$20.00 | \$20.00 |
| 9996595 | \$20.00 | \$20.00 |

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. Citation No. 3586432 is VACATED.

3. Citation Nos. 9996593, 9996594, 9996595, and the proposed penalties **therefor** are AFFIRMED.

4. 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 \$60 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

ek