

CCASE:
SOL (MSHA) V. MID-CONTINENT RESOURCES
DDATE:
19920630
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
THE FEDERAL BUILDING
1244 SPEER BOULEVARD #280
DENVER, SO 80204-3582
(303) 844-5266 / FTS 564-5266

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

CIVIL PENALTY PROCEEDING
Docket No. WEST 91-168
A.C. No. 05-00301-03764

v.

Dutch Creek Mine

MID-CONTINENT RESOURCES
INCORPORATED,
RESPONDENT

DECISION APPROVING PARTIAL SETTLEMENT

Appearances: Margaret A. Miller, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
Edward Mulhall, Jr., DELANEY & BALCOMB, P.C. Glen-
wood Springs, Colorado,
for Respondent.

Before: Judge Morris

This is a 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 commenced in Glenwood Springs, Colorado on April 15, 1992. The parties reached a partial amicable settlement 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:

| Citation/ Order No. | Proposed Penalty | Amended Proposed Penalty |
|------------------------|------------------|-----------------------------|
| 3580363 | \$1,000.00 | \$ 600.00 |
| 3580351 | \$1,100.00 | 660.00 |
| 3410391 | \$1,100.00 | 660.00 |
| 3411019 | \$1,600.00 | 960.00 |
| | TOTAL | \$2,880.00 |

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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. Citation Nos. 3580363, 3580351, 3410391, and 3411019 and the amended proposed penalties are AFFIRMED.

2. 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 be assessed against the Respondent in the amount of \$2,880.00 and Petitioner is authorized to assert such assessment as a claim in Respondent's Bankruptcy case.

3. The undersigned Judge retains jurisdiction of this case and related cases not otherwise disposed of by the settlement herein. (Order No. 3410800 was the subject matter of contest and evidentiary hearings conducted April 15 and 16 and June 16 and 17, 1992).

John J. Morris
Administrative Law Judge