

CCASE:  
SOL (MSHA) V. MOUNTAINTOP RESTORATION  
DDATE:  
19930329  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 92-897  
Petitioner : A. C. No. 15-15684-03541 R  
v. :  
: Docket No. KENT 92-898  
MOUNTAINTOP RESTORATION, INC., : A. C. No. 15-15684-03542 R  
Respondent :  
: Mountaintop Restoration  
: No. 2

DECISION APPROVING SETTLEMENT

Appearances: Darren L. Courtney, Esq., Office of the Solicitor,  
U. S. Department of Labor, Nashville, Tennessee,  
for the Secretary;  
Danny Patton, Safety Director, Mountaintop  
Restoration, Inc., Paintsville, Kentucky, for  
Respondent.

Before: Judge Maurer

These cases are before me upon a petition for assessment of  
civil penalty under section 105(d) of the Federal Mine Safety and  
Health Act of 1977 (the Act). At the hearing, the parties  
jointly moved to settle these cases based primarily on the  
financial plight of the respondent on the following basis:

CITATION NO.	PROPOSED ASSESSMENT	PROPOSED SETTLEMENT
3512086	\$ 371	\$ 371
3512087	434	434
3512088	434	434
3512089	434	150
3512090	434	434
3512091	241	20
3512092	434	434
3512093	241	20
3512095	371	100
3512096	371	371
3512097	434	434
3512098	241	20
3512341	371	371
3512342	241	20

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3512351	371	371
3512352	434	434
3512353	371	371
3512354	434	434
3512355	371	371
3512356	294	294
3817171	227	50
3817172	147	50
3817179	147	
*(Footnote 1)		
3817181	241	241
3817182	276	276
3817184	119	50
3817186	147	50
3817187	119	50
3817196	227	227
3517775	1785	750
9875791	192	50
TOTAL	10954	7732

I have considered the representations and documentation submitted in these cases, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, respondent shall pay a total penalty of \$7732 in 18 equal monthly installments of \$429.56 each, beginning within 30 days of this order, and continuing until paid in full. Upon payment in full, these cases are DISMISSED.

Roy J. Maurer  
Administrative Law Judge

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1/ Citation No. 3817179 was actually issued to an independent contractor, a trucking company, and clearly marked as such. But somehow or other it was included with this group of citations that was assessed against this respondent. It simply does not apply to this respondent and I have ignored it in approving the settlement of these cases.

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Distribution:

Darren L. Courtney, Esq., Office of the Solicitor,  
U. S. Department of Labor, 2002 Richard Jones Road, Suite B-201,  
Nashville, TN 37215 (Certified Mail)

Mr. Danny Patton, Safety Director, Mountaintop Restoration, Inc.,  
P. O. Box 940, Paintsville, KY 41240 (Certified Mail)

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