

CCASE:  
SOL (MSHA) V. MID-CONTINENT RESOURCES INC.,  
DDATE:  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1244 SPEER BOULEVARD #280  
DENVER, CO 80204-3582  
(303) 844-5266/FAX (303) 844-5268

June 21, 1993

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEST 91-168  
Petitioner : A.C. No. 05-00301-03764  
 :  
v. :  
 : Dutch Creek Mine  
MID-CONTINENT RESOURCES INC., :  
Respondent :

AMENDED 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., Esq., Glenwood 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.

1. Respondent was issued five orders herein pursuant to the Federal Mine Safety and Health Act of 1977 as follows:

| Citation/Order Number | Date          | 30 C.F.R. Regulation |
|-----------------------|---------------|----------------------|
| 3410800               | May 01, 1990  | 75.400               |
| 3410363               | May 02, 1990  | 75.316               |
| 3410351               | May 29, 1990  | 75.499               |
| 3410391               | June 19, 1990 | 75.316               |
| 3411019               | June 27, 1990 | 75.1704              |

2. However, one of the orders, Order No. 3410351, is the subject matter of a discretionary review now pending before the Federal Mine Safety and Health Review Commission in Docket Nos. WEST 91-594 and WEST 91-626. Order No. 3410351 was erroneously included in the decision for partial settlement as well as the order of the Commission entered thereon.

3. Order No. 3410800 was reassessed and settled in Docket No. WEST 92-717, therefore, it should be deleted from this civil penalty proceeding.

4. Respondent has previously agreed to reduce the proposed penalties of the remaining orders by 40 percent based on Respondent's ability to pay.

5. Accordingly, Petitioner has previously agreed to amend the proposed penalties as follows. Such amendment is to be effective upon the approval of this settlement agreement by the Federal Mine Safety and Health Review Commission.

| Order No. | Proposed Penalty | Amended<br>Proposed Penalty |
|-----------|------------------|-----------------------------|
| 3410363   | \$1,000.00       | \$ 600.00                   |
| 3410391   | 1,100.00         | 660.00                      |
| 3411019   | 1,600.00         | 960.00                      |
|           | \$3,700.00       | \$2,220.00                  |

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. Order No. 3410351 was erroneously included in the motion for settlement as well as in the Order of the Commission entered thereon and said Order is deleted from this amended decision.

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2. Order No. 3410800 was reassessed and settled in WEST 92-717. Accordingly, it is deleted from this penalty proceeding.

3. Citation Nos. 3580363, 3410391, and 3411019, and the amended proposed penalties 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 be assessed against the Respondent in the amount of \$2,200.00 and Petitioner is authorized to assert such assessment as a claim in Respondent's Bankruptcy case.

5. The undersigned Judge retains jurisdiction of this case and related cases not otherwise disposed of by the settlement herein.

John J. Morris  
Administrative Law Judge

Distribution:

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