

CCASE:
SOL (MSHA) V. MID-CONTINENT RESOURCES
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
(303) 844-5267/FAX (303) 844-5268
June 29, 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., DELANEY & BALCOMB,
P.C., 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.

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 disposition are as follows:

Citation/Order Number	Proposed Penalty	Amended 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

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In support of that 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. 3410363, 3410391, and 3411019 and the amended proposed penalties are AFFIRMED.
2. Order No. 3410800 was reassessed and settled in WEST 92-717. Accordingly, it is deleted from this penalty proceeding.
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 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.
4. 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:

Margaret A. Miller, Esq., Office of the Solicitor, U.S. Department of Labor, 1585 Federal Office Building, 1961 Stout Street, Denver, CO 80294 (Certified Mail)

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MID-CONTINENT RESOURCES INC., : Dutch Creek Mine
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MOTION TO AMEND DECISION

Comes now John J. Morris, Administrative Law Judge, pursuant to Rule 69(c), 29 C.F.R. 2700.69(c), seeks to correct clerical errors in the "Decision Approving Partial Settlement" issued June 24, 1992.

1. The decision included therein Order No. 3580363. However, said Citation number was erroneous and in lieu thereof the Citation should read "3410363."

2. Further, Citation No. 3580351 was erroneously listed and said Citation should be deleted.

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

The decision approving settlement issued June 24, 1992, has become a final order of the Commission. Accordingly, the Judge seeks to correct the errors herein by leave of the Commission. An "Amended Decision Approving Partial Settlement" is attached hereto.

John J. Morris
Administrative Law Judge

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