

CCASE:  
SOL (MSHA) V. S & H MINING  
DDATE:  
19940527  
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 AND SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. SE 93-386
Petitioner	:	A. C. No. 40-02045-03595
	:	
v.	:	Docket No. SE 93-587
	:	A. C. No. 40-02045-03596
S & H Mining, INC.,	:	
Respondent	:	Docket No. SE 93-595
	:	A. C. No. 40-02045-03597

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,  
U. S. Department of Labor, Nashville, Tennessee,  
for the Petitioner;  
Imogene A. King, Esq., Franz, McConnell & Seymour,  
Knoxville, Tennessee, for the Respondent.

Before: Judge Feldman

The above matters were called for consolidated hearing on May 3, 1994, in Knoxville, Tennessee. The respondent, S & H Mining, Incorporated, stipulated that it is a mining operator subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. 801 et. seq. These matters concern petitions for civil penalty filed by the Secretary of Labor pursuant to Section 105(d) of the Act.

These cases involve five citations that were all designated as significant and substantial. Proposed penalties for three of the citations were derived under the Secretary's special assessment procedures set forth in Section 100.5 of the regulations, 30 C.F.R. 100.5. The total proposed penalty for all citations was \$3,913. After the parties presented their direct cases on two of the subject citations, the parties requested to confer for the purpose of reaching a comprehensive settlement of all matters in issue. The parties ultimately reached an accord and presented their settlement motion on the record. (Tr. 200-208). The terms of the settlement agreement include the respondent's payment of a total civil penalty of \$1,424. In return, the Secretary has agreed to remove the special assessment from Citation Nos. 4041554, 4041544 and 4041553. In addition, the Secretary moves to delete the significant and substantial designation from Citation

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No. 4041559. The Secretary also moves to vacate Citation No. 4041555. The specific citation numbers, initial proposed penalties, and agreed upon penalties are as follows:

Dkt. No.	Citation No.	Initial Proposed	
		Penalty	Settlement
SE 93-386	4041554	\$900	\$362
	4041555	\$235	Vacated
SE 93-587	4041544	\$1,400	\$600
	4041559	\$178	\$100
SE 93-595	4041553	\$1,200	\$362
	TOTAL	\$3,913	\$1,424

In view of the information presented on the record pertaining to the statutory penalty criteria in Section 110(i) of the Act as well as information related to the appropriate circumstances for imposition of a special assessment under Section 100.5 of the regulations, I issued a bench decision approving the settlement terms noted above.

ORDER

Accordingly, the parties' Motion to Approve Settlement IS GRANTED. The settlement terms presented on the record and summarized above are incorporated herein. IT IS ORDERED that the respondent pay a total civil penalty of \$1,424 in total satisfaction of the citations in question. Payment is to be made to the Mine Safety and Health Administration within 30 days of the date of this Decision. Upon timely receipt of payment, these cases ARE DISMISSED.

Jerold Feldman  
Administrative Law Judge  
(703) 756-5233

Distribution:

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/11