

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 3, 2002

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2000-157
Petitioner	:	A. C. No. 34-01707-03532
	:	
v.	:	
	:	
	:	
GEORGES COLLIERS INCORPORATED,	:	Mine: Pollyanna No. 6
Respondent.	:	

DECISION

Appearances: Christopher V. Grier, Esquire, and Brian Duncan, Esquire, Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, for the Secretary; Elizabeth M. Christian, Esquire, San Antonio, Texas, for the Respondent.

Before: Judge Barbour

The captioned proceeding was severed from the cases with which it was consolidated and was stayed pending the filing of an associated section 110(c) proceeding (*see Georges Colliers, Inc.*, 23 FMSHRC _____, Docket No. CENT 1999-178, etc., (December 26, 2001), Slip op. 5 n. 1 (CALJ Barbour)). While the case was stayed the parties agreed to settle the section 110(c) proceeding. Thus, when the section 110 (c) proceeding was filed, a motion to approve the settlement also was filed. I granted the motion, approved the settlement, and dismissed the section 110 (c) proceeding (*Alva D. Lawley, employed by Georges Colliers, Inc.*, Docket No. CENT 2001-157 (August 30, 2001)). The parties also filed stipulations with regard to the captioned case. The stipulations, together with stipulations entered before the case was stayed, effectively limit the case to a single issue -- the effect of any civil penalty assessed on the Respondent's ability to continue in business.

In *Georges Colliers, Inc.*, 23 FMSHRC _____ Docket No. CENT 1999-178, etc., (December 26, 2001) (Slip op. 45), I concluded that the imposition of proposed civil penalties would adversely affect the company's ability to continue in business and that a substantial reduction in what I otherwise would assess was warranted. The evidence upon which the conclusion was based is applicable to the captioned proceeding (Slip. op. 43-44). Given the evidence, I reiterate my conclusion and find that the size of the penalty assessed herein will adversely affect the company's ability to continue in business.

In light of the parties stipulations, which are incorporated herein by reference, and in light of my conclusion regarding the ability to continue in business penalty criteria, I make the following assessment:

<u>Citation/ Order No.</u>	<u>Date</u>	<u>30 C.F.R.</u>	<u>Proposed Penalty</u>	<u>Assessed Penalty</u>
7599496	8/18/99	72.620	\$1,250.00	\$250.00

The violation was very serious and the Respondent's negligence was high. The violation was abated in a timely fashion. Given the large history of previous violations; the small size of the operator; and the effect of the penalty on the Respondent's ability to continue in business, I assess a penalty of \$250.00 for the violation.

ORDER

The Respondent **IS ORDERED** to pay a civil penalty of \$250.00 within 30 days of the date of this decision and upon full payment this proceeding is **DISMISSED**.¹

David F. Barbour
Chief Administrative Law Judge

Distribution:

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¹ Payment may be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P. O. BOX 360250M, PITTSBURGH, PA 15251.