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ENERGY FUELS V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

ENERGY FUELS CORPORATION,
APPLICANT

Application for Review
and
Civil Penalty Proceedings

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

Docket No. DENV 78-421
DENV 79-69-P

(A/O No. 05-00303-03003)

Nos. 1 and 2 Strip Mines

DECISION

Appearances: Eugene McGuire, Attorney, Holland and Hart, Denver,
Colorado, for Applicant;
Robert A. Cohen, Trial Attorney, Office of the
Solicitor, Department of Labor, for Respondent.

Before: Judge Littlefield

Introduction

This is a combined application for review and proceeding for
assessment of civil penalty which is governed by sections 105(d)
and 110(a) of the Federal Mine Safety and Health Act of 1977, 30
U.S.C. 801 et seq. Section 105(d) provides in relevant part:

(d) If, within 30 days of receipt thereof, an operator
of a coal or other mine notifies the Secretary that he
intends to contest the issuance or modification of an
order issued under section 104, or citation or a
notification of proposed assessment of a penalty issued
under subsection (a) or (b) of this section, or the
reasonableness of the length of abatement time fixed in
a citation or modification thereof issued under section
104, or any miner or representative of miners notifies
the Secretary of an intention to contest the issuance,
modification, or termination of any order issued under
section 104, or the reasonableness of the length of
time set for abatement by a citation or modification
thereof issued under section 104, the Secretary shall
immediately advise the Commission of

~90

such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation, order, or proposed penalty, or directing other appropriate relief.

Section 110(a) provides:

The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, shall be assessed a civil penalty by the Secretary which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

Alleged Violation

On May 11, 1978, Applicant, Energy Fuels Corporation (EFC), filed for review of Order No. 389944 dated April 18, 1978. On November 20, 1978, the Mine Safety and Health Administration (MSHA), through its attorney, filed a petition for assessment of a civil penalty charging one violation of the Act.

Tribunal

A hearing was held on the above-consolidated matters in Denver, Colorado, on February 27, 1979. Both MSHA and EFC were represented by counsel (Tr. 2).

Motion

After a conference referred to, *infra*, EFC moved to withdraw its application for review (Tr. 4). The motion was GRANTED (Tr. 4-5).

Evidence

The Judge held a prehearing conference before bringing the hearing to order and heard preliminary discussions bearing on the issues on the part of counsel for both parties (see, *supra*).

The Judge, after hearing all evidence, studying the record, reviewing the exhibits, giving sympathetic regard to mitigating circumstances, and fully considering the criteria shown in section 110(i) of the Act, made findings of fact, conclusions of law and issued an ORDER on the record, rendering his decision from the bench. One violation was found as originally charged.

~91

Findings of Fact and Conclusions of Law

The findings of fact, conclusions of law, and ORDER made on the record from the bench are hereby incorporated herein by reference and are AFFIRMED (Tr. 24-26).

Civil Penalty Assessed

Order No.	Date	Standard 30 CFR	Penalty
00389944	4/18/78	77.404(a)	\$900

Disposition

The Judge was notified by letter from the Office of the Solicitor, U.S. Department of Labor, that the Respondent had submitted payment of \$900, as ordered for the one violation found by the Judge in his BENCH decision. WHEREFORE the above-captioned is CLOSED.

Malcolm P. Littlefield
Administrative Law Judge