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FMC WYOMING 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

FMC WYOMING CORPORATION,  
CONTESTANT

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION,  
RESPONDENT

CONTEST PROCEEDINGS

Docket No. WEST 89-170-RM  
Order No. 2647760; 2/28/89

Docket No. WEST 89-171-RM  
Order No. 2648041; 2/28/89

Docket No. WEST 89-179-RM  
Order No. 2647759; 2/28/89

FMC Trona Mine  
Mine I.D. No. 48-00152

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION,  
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. WEST 89-355-M  
A.O. No. 48-00152-05572

v.

FMC Trona Mine

FMC WYOMING CORPORATION,  
RESPONDENT

DECISION APPROVING PARTIAL SETTLEMENT

Before: Judge Lasher

Three of the four enforcement documents in the above penalty docket are the subject of an agreement reached by the parties. One of the enforcement documents resolved, Order No. 2647758, is not related to any contest docket. The remaining (fourth enforcement document, Order No. 2647760, is related to Contest Docket No. WEST 89-170-RM, and the parties have (1) reached a contingency agreement thereto depending on the determination by the D.C. Circuit Court of Appeals of the Secretary's appeal of a Commission decision in an unrelated case (Western Fuels-Utah, Inc., Docket Nos. WEST 86-113-R and WEST 86-114-R). Thus, by separate Order, this penalty docket, WEST 89-355-M (since it is not entirely resolved) and related Contest Docket WEST 89-170-RM are being stayed pending the aforesaid decision by the D.C. Circuit Court.

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In summary, the partial settlement reached by the parties is as follows:

Related Contest Docket No.	Citation/ Order No.	Proposed Penalty	Settlement
WEST 89-170-RM	2647760		(Stayed)
WEST 89-171-RM	2648041	\$1,000	\$ 500
WEST 89-179-RM	2647759	1,000	500
(None)	2647758	3,000	2,000
		\$5,000	\$3,000

As to Citation No. 2647759 in Docket No. WEST 89-179-RM, the parties have also agreed that the "unwarrantable failure" aspect of this enforcement should be deleted by the modification of the Citation to reflect its issuance under Section 104(a) of the Act rather than under Section 104(d) thereof.

The settlement is well-supported in the stipulation signed by both parties and, in the premises, is found reasonable and here approved.

#### ORDER

Citation No. 2647759 is MODIFIED to reflect its issuance under Section 104(a) of the Act rather than Section 104(d) thereof, and is otherwise AFFIRMED.

Withdrawal Order No. 2648041 is AFFIRMED.

Contestant/Respondent, if it has not previously done so, is ordered to pay to the Secretary of Labor within 50 days from the date hereof the total sum of \$3,000.00 as and for the civil penalties agreed on and here assessed.

Contest Proceedings numbered WEST 89-171-RM and WEST 89-179-RM are DISMISSED.

Michael A. Lasher, Jr.  
Administrative Law Judge