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

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

CIVIL PENALTY PROCEEDING

Docket No. CENT 91-12  
A.C. No. 29-00845-03537

v.

York Canyon Surface Mine

PITTSBURG & MIDWAY COAL  
MINING COMPANY,  
RESPONDENT

DECISION

Appearances: Ernest Burford, Esq., Office of the Solicitor,  
U.S. Department of Labor, Dallas, Texas,  
for Petitioner;  
John W. Paul, Esq., Englewood, Colorado,  
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment of civil penalties under Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. the "Act". The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges the operator of the York Canyon Surface Mine with two violations of mandatory regulatory standards, 30 C.F.R. 77.2058 and 30 C.F.R. 71.101.

The operator filed a timely answer contesting the alleged violations, and the appropriateness of the proposed penalties.

Pursuant to notice, a hearing on the merits was set before me on September 19, 1991, along with other cases involving the same parties and attorneys.

Stipulations

At the hearing, the parties negotiated and read into the record the following stipulations:

1. The Pittsburg and Midway Coal Company is engaged in the mining and selling of coal in the United States and its mining operations affect interstate commerce.

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2. Pittsburg and Midway Coal Company is the owner and operator of York Canyon surface mine, MSHA ID No. 29-00845.

3. Pittsburg and Midway Coal Company is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

4. The administrative law judge has jurisdiction in this matter.

5. The subject citation was properly served by a duly authorized representative of the Secretary upon an agent of Respondent on the date and place stated therein and may be admitted into evidence for the purpose of establishing its issuance, and not for the truthfulness or relevancy of any statements asserted therein.

6. The exhibits to be offered by Respondent and the Secretary are stipulated to be authentic, but no stipulation is made as to their relevance or truth of the matters asserted therein.

7. The proposed penalty will not affect the operator's abilities to remain in business.

8. The operator demonstrated good faith in abating the violations.

9. Pittsburg and Midway Coal Company is a large operator of a coal mine with 600,000 tons of production in 1990. A certified copy of the MSHA assessed violation history accurately reflects the history of this mine for the two years prior to the date of the citation.

After entering the stipulations in the record, the parties while off the record negotiated and reached a settlement of all issues. The parties on the record stated that upon the basis of the new evidence received the day of the hearing, the Petitioner agreed and moved to delete the S&S designation in Citation No. 3241483 and to reduce the proposed penalty to \$80.

With respect to Citation No. 3241318, the S&S characterization of the citation had previously been removed at conference and the parties agreed to reduce the penalty to \$317.25.

After careful review and consideration of the pleadings, arguments, and submissions in support of the proposed settlement

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of this case, I conclude and find that the proposed settlement disposition is reasonable, appropriate, and in the public interest. Accordingly, the settlement agreement is approved.

ORDER

1. Citation Nos. 3241483 and 3241318 are modified to allege violations that are not significant and substantial and, as so modified both citations are AFFIRMED.

2. Respondent SHALL PAY TO MSHA a civil penalty of \$397.25 within thirty (30) days of this decision.

August F. Cetti  
Administrative Law Judge