

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

March 12, 1991

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

v.

TEXAS UTILITIES MINING
COMPANY,
Respondent

: CIVIL PENALTY PROCEEDING
:
: Docket No. CENT 91-26
: A. C. No. 41-01192-03531
:
: Big Brown Strip
:
:
:

DECISION

In response to the February 11, 1991, show cause order, the parties agreed that subject case should be stayed pending a decision by the undersigned in Drummond Co. Inc., Docket No. SE 90-126.

However, before a stay order could be issued herein, a decision was rendered on March 6, 1991, in Drummond granting the operator's motion to remand the penalty to the Secretary. The decision in Drummond is dispositive of this case, which involves one violation where the excessive history criteria in Program Policy Letter No. P90-III-4 was used to calculate the amount of the penalty.

In light of the foregoing, it is ORDERED that the operator's motion for remand be GRANTED.

It is further ORDERED that the Secretary recalculate her proposed penalty without reference to Program Policy Letter No. P90-III-4.



Paul Merlin
Chief Administrative Law Judge

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