

CCASE:  
MONTEREY COAL V. MSHA  
DDATE:  
19790501  
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
May 1, 1979

MONTEREY COAL COMPANY

v. Docket No. VINC 78-416

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION  
DECISION

Monterey Coal Company has applied for review of a citation issued under section 104(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. (1978) ["the 1977 Act"]. The citation alleged that Monterey had violated the mine safety standard at 30 CFR §75.1403, which requires that adequate safeguards be provided "to minimize hazards with respect to transportation of men and materials...." Monterey contends that the standard does not apply to a conveyor belt that transports only coal. The citation was terminated when the alleged violation was abated; the citation does not contain special findings under sections 104(d) or (e) of the 1977 Act. Administrative Law Judge Broderick dismissed Monterey's application for review on the ground that the citation was not reviewable until the Secretary proposed a penalty. On October 11, 1978, the Commission granted Monterey's petition for discretionary review.

The issue here is whether an operator served with a citation for a violation that has been abated may immediately contest the allegation of violation in the citation. In *Energy Fuels Corp.*, No. DENV 78-410 (May 1, 1979), and *Helvetia Coal Co.*, No. PITT 78-322 (May 1, 1979), we examined that question and answered it in the affirmative. We accordingly reverse the Judge's decision and remand for further proceedings consistent with those opinions.

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Commissioner Lawson, dissenting:

For the reasons stated in my dissenting opinion in Energy Fuels Corp., No. DENV 78-410, I would deny immediate review of all citations for which the alleged violation has been abated.