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SOL (MSHA) V. ENERGY FUELS
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceedings Docket No. DENV 79-27-P A/O No. 05-00302-03001
v.	Docket No. DENV 79-28-P A/O No. 05-00302-03002
ENERGY FUELS CORPORATION, RESPONDENT	Energy #1 & 2 Strip Mine

DECISION

Appearances: Ann M. Noble, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner
John D. Coombe, & Deborah Friedman, Esqs., Holland & Hart, Denver, Colorado, for Respondent

Before: Judge Charles C. Moore, Jr.

The two cases captioned above allege 13 violations of the Federal Mine Safety and Health Act of 1977. At the beginning of the hearing, the parties submitted a stipulation of partial settlement which I accepted on the record. Pursuant to that stipulation, a total penalty of \$650 is assessed for the following citations: Citation No. 389931, Citation No. 389950, Citation No. 389959, and Citation No. 389960. Petitioner vacated Citation No. 389952 because the circumstances did not constitute a violation of the mandatory standard. Six of the citations alleged that parking brakes on various equipment were insufficient. The citation numbers are 389935, 389943, 389945, 389953, 389963, and 389965. It was agreed that the trial would be confined to Citation No. 389965 but that all of the other citations would be controlled by the results in the citation tried, including the percentage relationship between the penalty assessed by the assessment officer and the penalty assessed by me. For example, if I were to double the assessment officer's penalty as to Citation No. 389965, all of the others would also be doubled. This resulted in only three alleged violations being subject to an evidentiary hearing. They were the parking brake citation mentioned, Citation No. 389964, involving alleged unsafe U-bolt clamps on a powder truck and Citation No. 389939, involving an accumulation of material.

After the Secretary had presented its entire case as to the three citations and after Respondent had submitted most of its evidence, the parties

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decided to enter a further stipulation whereby the Secretary of Labor would withdraw its penalty action with respect to and consent to the vacation of all of the parking brake citations. The aforementioned parking brake citations are accordingly vacated. Respondent agreed to withdraw its challenge to Citation No. 389939 and the parties agreed that an appropriate penalty would be the original proposed assessment of \$240. I approved this agreement. As to the remaining violation, Citation No. 389964, the parties agreed that the explosive hauling truck was in an unsafe condition and that a violation of the safety standard had occurred. The only issue left for me to decide was whether Respondent could be held responsible for a violation committed by the owners of an independent explosive supply company. The facts regarding the relationship between the mining company and the explosive company were stipulated and briefs were filed.

It was agreed, however, that I should stay my decision until after the Commission had decided Secretary of Labor v. Monterey Coal Company, Docket No. HOPE 78-469, etc. The Commission has issued a decision in Monterey, however, it based that decision on Secretary of Labor v. Old Ben Coal Company, Docket No. VINC 79-119, decided October 29, 1979. Petitions to review the Commission's decisions in both Monterey and Old Ben have been filed with a United States Court of Appeals, so the last word may not have been spoken on this issue.

I see no point in delaying my decision pending a court decision because the losing party will undoubtedly appeal to the Commission and the result will eventually be controlled by the court decision anyway. Nor do I see any point in adding my analyses of the precedents which go to the point of this controversy. In Old Ben and in Monterey the Commission held the owner of a mine responsible for the actions of an independent contractor even though the decision of the Secretary of Labor to cite the owner had been based on an arbitrary policy of always citing the owner for a violation committed in the mine. The decisions were made without regard to whose employees might be endangered, who would be in the best position to observe and abate the unsafe condition, or the control which the owner exercises over the independent contractor. The Commission hints that it may change its position at some future time, but it has not done so yet and in accordance with my interpretation of the two Commission decisions on this point, I will hold Energy Fuels Corporation responsible for the violation. I realize that this means that in order to avoid the possibility of a citation, the mine owner may have to inspect every vehicle that comes on to mine property, and while I am not sure that such a requirement will promote mine safety, I nevertheless think it is required by the two Commission decisions mentioned above. The negligence on Respondent's part, however, was of a lower order and a penalty of \$50 will be assessed. As to the other criteria, the only information in the file is that contained in the assessment sheet and I am relying on that.

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ORDER

Respondent is ordered to pay to MSHA, within 30 days a penalty in the amount of \$940.

Charles C. Moore, Jr.
Administrative Law Judge