

CCASE:  
WHITE PINE COPPER V. SOL (MSHA)  
DDATE:  
19800204  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

WHITE PINE COPPER,  
DIVISION OF COPPER MINE,  
APPLICANT

Applications for Review

Docket No. LAKE 79-223-RM  
Citation No. 295881 7/31/79

v.

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

Docket No. LAKE 79-224-RM  
Citation No. 294054 7/31/79

Docket No. LAKE 79-225-RM  
Citation No. 295055 7/31/79

Docket No. LAKE 79-226-RM  
Citation No. 294056 8/1/79

White Pine Mine

DECISION AND ORDER

The Secretary moves to dismiss the captioned matters on the ground that vacation of the challenged citations moots the issue of their validity. The operator opposes the motion on the ground that issuance of the citations was in excess of MSHA's statutory authority. The operator seeks therefore an order declaring MSHA's action null, void and unenforceable. See, *Eastern Associated Coal Corp., HOPE 73-663*, decided February 12, 1974, affirmed in part and reversed in part, 4 IBMA 298 (1975); *Eastern Assoc. Coal Corp. v. IBMA*, 491 F.2d 277 (4th Cir. 1974); *Super Tire Engineering v. McCorkle*, 416 U.S. 115, 122-126 (1975).

In essence, the operator claims that MSHA's method of enforcement is a deprivation of its property without due process of law. MSHA and the Union, on the other hand, claim that the operator's asserted right to change its ground support system without proof that the alternate method is safe may result in deprivation of a miner's right to life, liberty and property, also without due process of law.

The record shows that acting on a complaint under section 103(g)(1) of the Act, MSHA charged that the operator's failure to furnish data substantiating its claim that use of 4-foot resin bolts in lieu of alternating 4 and 6-foot mechanical bolts was a violation of the ground support standard for metal mines. 30 CFR 57.3-20. Thereafter, an evaluation of the alternate method by MSHA and the operator established

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that in any area of the mine where "geologic and stress conditions are similar" 4-foot resin bolts will provide minimal adequate support. Evaluation Report at 6. In areas where the "geologic and horizontal stress conditions are different", however, MSHA reserves the right to require the operator to prove the efficacy of the 4-foot resin bolts prior to their general use.

After a careful consideration of the vital interests involved, I conclude the interest in life outweighs the interest in property. Congress made this choice inevitable when, in staking out goals for the Mine Safety Act, it solemnly declared that "the first priority and concern of all in the mining industry must be the health and safety of its most precious resource--the miner". That priority is reflected in the Act's review provisions, which do not tolerate temporary relief from 104(a) citations but which, under the Commission's decision in Energy Fuels Corp., DENV 78-410, 1 BNA MSHC 2013, 1 FMSHRC Decisions 299, (May 1, 1979), do provide for immediate, expedited review of the merits of abated citations. For these reasons, I find the operator's claim of irreparable injury or deprivation of property without due process of law without merit. As the courts have noted, "irreparable harm, presupposes the absence of an available remedy for relief, whether administrative or judicial." Sink v. Morton, 529 F.2d 601, 604 (4th Cir. 1975). In this case the Act clearly provides such a remedy since the operator can obtain an expedited hearing on the merits of the validity of a citation or closure order, including the right to apply for a temporary stay of a closure order. Such a procedure accords the operator all the process he is due. Lucas v. Morton, 358 F.Supp. 900, 905 (W.D. Pa. 1972); Sink v. Morton, supra.

The premises considered, it is ORDERED that the Secretary's motion to dismiss the captioned notice of contest be, and hereby is, GRANTED and the matter DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge