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Incorporated (Cementation) had contracted with respondent to construct mine shafts and other facilities and had been working continuously for several months when the citations were issued; that the work performed and the citations issued involved AMS and Cementation employees and equipment exclusively, except that respondent observed and inspected the work to assure compliance with the contract; and that the violations were abated by AMS and Cementation.

The sole issue, therefore, is whether respondent was the proper party to be cited. In MSHA v. Old Ben Coal Company, 1 FMSHRC 1480 (October, 1979) and again in MSHA v. Monterey Coal Co., 1 FMSHRC 1781 (November, 1979), the Commission ruled that mine owners may be cited for violations committed on their property by independent contractors. Until the Commission changes its position, these decisions are controlling and, together with the parties' stipulations, support a finding of violation.

ORDER

Accordingly, respondent is ordered to pay a civil penalty of \$672 within 30 days of this decision.

John A. Carlson
Administrative Law Judge