CCASE: SOL (MSHA) V. PHILLIPS URANIUM DDATE: 19800605 TTEXT: Federal Mine Safety and Health Review Commission Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH	CIVIL PENALTY PROCEEDING
ADMINISTRATION (MSHA),	DOCKET NO. CENT 79-281-M
PETITIONER	A/O NO. 29-01730-05002
	DOCKET NO. CENT 79-282-M
V.	A/O NO. 29-01688-05003
	DOCKET NO. CENT 80-6-M
PHILLIPS URANIUM CORPORATION,	A/O NO. 29-01688-05004
RESPONDENT	DOCKET NO. CENT 80-124-M
	A/O NO. 29-01688-05005
	(Consolidated)

Mine: Nose Rock #1 Crownpoint Mine: Nose Rock #2 Crownpoint

APPEARANCES:

E. Justin Pennington, Esq., of Dallas, Texas, for the Petitioner Malcolm L. Shannon, Jr., Esq., of Albuquerque, New Mexico, for the Respondent

DECISION

Carlson, Judge

These cases involve thirteen citations issued to respondent for safety violations committed by independent contractors performing work at respondent's mine near Crownpoint, New Mexico. The parties submitted a stipulation of facts in which they state that the alleged violations were in fact committed and that the penalties proposed by the Secretary are reasonable. All matters of fact recited in the stipulated record are hereby found to be true and are fully incorporated into this decision. Both parties also filed motions for summary decision.

Briefly summarized, the stipulations show that respondent owned mining rights to and was mining at the mine sites when they were inspected; that American Mine Services, Incorporated (AMS) and Cementation West, 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

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