

CCASE:
SOL (MSHA) V. ELDEN & SANDRA WAIT
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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 PROCEEDING
DOCKET NO. WEST 79-171-M
A/O NO. 04-04256-05001

v.

ELDEN AND SANDRA WAIT,
RESPONDENT

DOCKET NO. WEST 79-172-M
A/O NO. 04-04256-05002

MINE: GREEN DECORATIVE ROCK

DECISION AND ORDER

APPEARANCES:

Alan M. Raznick, Esq., Office of the Solicitor, United States
Department of of Labor, San Francisco, California,
for the Petitioner

Elden L. Wait, RFD Box 8, Plymouth, California,
for the Respondent

Before: Judge Virgil E. Vail

STATEMENT OF CASE

This proceeding was brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). The petition for assessment of civil penalty (now called a proposal for a penalty, 29 CFR 2700.27) was filed June 11, 1979 alleging nine violations of mandatory safety standards contained in 30 CFR Part 56. The violations were charged in citations issued to Respondent following an inspection of a mine in Amador County, California owned and operated by the Respondent.

Pursuant to notice, a hearing on the merits was held in Sacramento, California on September 9, 1980. Federal Mine Inspector Edward Knepper testified on behalf of the Petitioner. Elden Wait, owner and operator of the mine involved herein, testified on his own behalf.

Subsequent to the hearing in this case and prior to the submission of post hearing briefs, the Respondent moved that the nine citations be dismissed based upon a recent decision of the Ninth Circuit Court of Appeals. Ray Marshall, Secretary of Labor, United States Department of Labor v. Elden Wait, Trading and d/b/a Elden Wait, Greenstone Quarry No. 78-2345. The Petitioner has indicated that in light of the above decision of the Ninth Circuit Court of Appeals, he does not object to the Respondent's motion for dismissal.

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In light of the foregoing, the above captioned cases are hereby
DISMISSED.

Virgil E. Vail
Administrative Law Judge