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

CLIMAX MOLYBDENUM COMPANY, A DIVISION OF AMAX, INC., APPLICANT	Application for Review Docket No. DENV 79-122-M
v.	Citation No. 332535 November 17, 1978
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Henderson Mine and Mill

ORDER APPROVING STIPULATIONS FOR RESOLUTION OF NOISE  
CITATION ON THE BALL MILL AT THE HENDERSON MINE  
AND  
GRANTING APPLICANT'S MOTION TO WITHDRAW  
APPLICATION FOR REVIEW

Climax Molybdenum Company (Climax) filed an application for review in the above-captioned proceeding pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977. An answer was filed by the Mine Safety and Health Administration (MSHA). Thereafter, various orders of continuance were issued to permit the parties an opportunity to evaluate the feasibility of potential noise controls.

On November 6, 1980, Climax and MSHA filed a stipulation for resolution of the noise citation on the Ball Mill at the Henderson Mine. The stipulation states as follows:

This Agreement is made and entered into by Henderson Mine and Mill, Climax Molybdenum Company, a Division of AMAX Inc. (hereinafter "Climax"), and the Department of Labor and Mine Safety and Health Administration (hereinafter collectively referred to as "MSHA") and executed in their behalf by their respective attorneys.

WHEREAS Climax has filed Applications for Review of a certain citation issued by MSHA, being Citation 332535 (Docket No. DENV 79-122-M), and

WHEREAS as the result of the work done since the filing of that Application for Review, Climax and MSHA believe that the above-referenced citation can be resolved without litigation.

NOW THEREFORE Climax and MSHA enter into the following agreement:

1. During the course of the examination of ball mill noise, the Henderson Mine and Mill of Climax has significantly expanded its noise control program for equipment and facilities at the Henderson Mine and Mill. MSHA recognizes that the Henderson Mine and Mill has developed a substantial ongoing hearing conservation and engineering noise control program for the ball mills and the Henderson Mine and Mill agrees to continue its implementation of that program.

2. Climax and MSHA are in agreement that the primary burden for further developing new quieter milling equipment at the Henderson Mill should fall upon the manufacturers of milling equipment. The Henderson Mill has and will continue to evaluate commercially available potential engineering noise controls, as manufacturers make them available or as suggested by MSHA, but will no longer pursue the type of research and development work which it has done over the past two years.

3. The Henderson Mill will, as a part of this settlement, continue to utilize rubber liner materials installed in ball charging and shaker screens at the Henderson Mill.

4. With respect to the citation itself, the parties agree that Citation 332535, involving the ball mill operator, will be abated and Climax will pay a penalty of \$25.

5. Climax and MSHA agree that their personnel will continue to communicate regarding developments with respect to noise control. The extent of time required for in-mill evaluation of any potential noise control will vary depending upon the control, the piece of equipment involved, and the commercial availability of the control. In the future, MSHA will make a reasonable attempt to advise Henderson personnel of any new potential engineering noise controls which may be feasible for use at the Henderson Mill and allow a reasonable time for in-mill evaluation and implementation of that control, if it is found feasible, before any citations are issued. It is acknowledged that ultimately Climax and MSHA may disagree as to the feasibility of a particular engineering noise control. In the event that Henderson personnel are in the process of or have already evaluated the particular control referred to them, information regarding the results of that evaluation will be made available to MSHA personnel upon request.

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On November 20, 1980, Climax filed a motion to withdraw the application for review. The motion states as follows:

COMES NOW Climax Molybdenum Company, a Division of AMAX Inc., by and through its undersigned attorneys, and moves that the Court approve the Stipulation for Resolution of Noise Citations on the Ball Mills at the Henderson Mine, direct that the above-captioned citation be abated and assessed as provided in that Stipulation, and dismiss the above-captioned Application for Review.

As grounds therefor Climax states as follows:

1. As more fully outlined in the Stipulation for Resolution previously filed with the Court, the parties have agreed after extensive technical study that their differences with respect to the above-captioned citations can be resolved without the need for lengthy, complex, and expensive litigation.

2. This motion has been discussed with Robert Cohen, counsel for MSHA, and he agrees that it should be granted.

WHEREFORE, Climax Molybdenum Company respectfully moves that this Court grant the relief requested herein.

By letter dated November 28, 1980, the parties were advised that the agreement to pay a civil penalty, as set forth in paragraph No. 4 of the November 6, 1980, stipulation, was beyond the scope of an application for review proceeding, and, accordingly, that one of several alternative courses of action would have to be followed before action could be taken on the stipulation and the motion to withdraw the application for review. In response thereto, the parties filed a supplemental stipulation on December 9, 1980. The supplemental stipulation states as follows:

1. With respect to the civil penalty matters set forth in Paragraph 4 of the Stipulation previously filed, Climax and the Secretary of Labor agree as follows:

A. MSHA's Office of Assessments has not yet proposed civil penalties for the citation mentioned in Paragraph 4 pursuant to Part 100, Title 30, Code of Federal Regulations because the citation has not yet been abated.

B. Upon the Administrative Law Judge's approval of the Stipulation and Climax's Motion to Withdraw its Application for Review, Climax and the Secretary of Labor will follow the following procedures to dispose of the civil penalty matters:

- i. Counsel for the Secretary will recommend to MSHA's Office of Assessments that a civil penalty of \$25.00 be proposed for Citation 332535 (Docket No. [DENV] 79-122-M).
- ii. Climax will pay said proposed \$25.00 assessment within 30 days after the civil penalty is assessed by MSHA.

The proposed disposition of this case, as set forth in the stipulations filed by MSHA and Climax, have been reviewed. It appears that approval of the stipulations will adequately protect the public interest.

It is understood, in accordance with the agreement set forth in the December 9, 1980, supplemental stipulation, that upon approval of the November 6, 1980, stipulation and the granting of the motion to withdraw the application for review, MSHA will recommend that the Office of Assessments propose a \$25 civil penalty for Citation No. 332535. It is further understood that Climax will pay such civil penalty within 30 days of the date of assessment. Accordingly, it is considered unnecessary to specifically order the termination or abatement of the citation and the assessment of a civil penalty.

In view of the foregoing, Climax's motion to withdraw its application for review is GRANTED. IT IS THEREFORE ORDERED that the stipulations filed on November 6, 1980, and December 9, 1980, be, and hereby are, APPROVED, and that the above-captioned proceeding be, and hereby is, DISMISSED.

John F. Cook  
Administrative Law Judge