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PARAMONT MINING V. SOL (MSHA)  
DDATE:  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

PARAMONT MINING CORPORATION, CONTESTANT	Contests of Citation and Orders
v.	Docket No. VA 81-56-R Citation No. 685706; 3/31/81
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Docket No. VA 81-57-R Order No. 685707; 4/1/81
	Docket No. VA 81-58-R Order No. 685708; 4/1/81
	No. 7 Underground Mine
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceeding
v.	Docket No. VA 81-84 A.O. No. 44-05222-03018
PARAMONT MINING CORP., RESPONDENT	Citation 0685706; 3/31/81 Citation 0685708; 4/1/81
	No. 7 Underground Mine

DECISIONS

Appearances: Galen C. Thomas, Esquire, New York, New York, for the  
contestant-respondent; Lawrence W. Moon, Trial Attorney,  
U.S. Department of Labor, Arlington, Virginia, for the  
respondent-petitioner;

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings concern contests filed by the  
contestant challenging the legality of one section 104(a)  
citation, one section 104(b) withdrawal order, and one section  
107(a) imminent danger order issued by MSHA Inspector William W.  
Mulvey upon inspection of the subject mine on March 31 and April  
1, 1981. The citations and orders in dispute are as follows:

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Docket VA 81-56-R

Section 104(a) citation no. 0685706, issued on March 31, 1981, charges a violation mandatory safety standard 30 CFR 75.316. In addition, the inspector made a finding that the violation was "significant and substantial."

Docket VA 81-57-R

Section 104(b) withdrawal order no. 0685707 was issued on April 1, 1981, after the inspector concluded that the previously issued citation no. 685706 had not been timely abated and that the time for abatement should not be further extended. The inspector cited another violation of mandatory standard 30 CFR 75.316, and concluded that the alleged violation was "significant and substantial." He subsequently modified his order to permit mining to continue during the abatement process.

Docket VA 81-58-R

Withdrawal order no. 0685708 was issued on April 1, 1981, and it is a combination section 107(a) imminent danger order and a section 104(a) citation for an asserted violation of mandatory standard 30 CFR 75.316, which the inspector believed was a "significant and substantial" violation.

In addition to the aforementioned citation and orders, respondent, by letter filed with me on August 27, 1981, (as augmented by subsequent motion) requested a consolidation of the Secretary's civil penalty proposals filed in connection with citations 0685706 and 0685708. These citations are included in Docket No. VA 81-84, a recently filed civil penalty proceeding concerning these same parties, in which the Secretary seeks civil penalty assessments for a total of 11 alleged violations. By agreement of the parties, the request for consolidation of that portion of Docket VA 81-84 pertaining to the two citations which are the subject of the instant contests was granted, and the parties advised me that they were prepared to offer evidence concerning the statutory criteria found in section 110(i) of the Act for my consideration in connection with civil penalty Docket VA 81-84.

Hearings were convened in Wise, Virginia, on September 9, 1981, pursuant to notice, and the parties appeared and participated fully therein. During the course of the proceedings, the parties advised me that they had agreed to a settlement disposition of the two citations at issue in Docket VA 81-84, and that in light of the proposed settlement contestant desired to withdraw its contests filed in Dockets VA 81-56-R, VA 81-57-R, and VA 81-58-R. Under the circumstances, the parties were afforded an opportunity to present their arguments in support of their proposed settlement of the cases on the record.

## Discussion

### Stipulations

The parties agreed and stipulated to the following:

(1) Paramount Mining Company is a medium sized coal mine operator.

(2) The No. 7 Underground Mine has an annual production of 400-450 tons of coal, employing approximately 75 underground miners.

(3) Respondent's previous history of violations is not such as to warrant any increases or reductions in the assessed civil penalties.

(4) Respondent exercised good faith in abating the citations in question.

(5) The penalties assessed will not adversely affect respondent's ability to remain in business.

In addition to the aforementioned stipulations, counsel for the Secretary asserted that while the circumstances surrounding the ventilation plan violations were serious, respondent's negligence with regard to the citations was not great because of the fact that the circumstances which prompted the issuance of the citations may not have been within the mine operator's control. In this regard, counsel stated that the operator may have been unaware of the existence of a body of water in the cited mine area which may have affected the mine ventilation in the cited bleeder entries. Further, counsel argued that there is a genuine dispute as to the existence of the concentrations of methane reported by the inspector and that counsel's investigation of the circumstances surrounding the issuance of the orders reveals a possible misunderstanding between the inspector and mine management with respect to precisely what was required to abate the initial citation and subsequent section 104(b) withdrawal order.

With regard to the imminent danger order, counsel for the Secretary candidly conceded that the order may have been an "afterthought" by the inspector and that it was issued subsequent to the section 104(b) withdrawal order which withdrew miners from the mine. Counsel also asserted that this order may have resulted from a misunderstanding rather than an imminently dangerous condition underground.

### Conclusions

On the basis of the foregoing arguments, the parties proposed a settlement for the section 104(a) citation no. 0685706 for the full assessment amount of \$880. Upon consideration of the arguments presented in support of the proposed settlement, and pursuant to Commission Rule 29 CFR 2700.30, I conclude and

find that the proposal is reasonable and in the public interest  
and the settlement is APPROVED.

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The Secretary's motion to vacate withdrawal order citation no. 0685708 and to dismiss the civil penalty proposal filed in Docket VA 81-84 for an assessment of a civil penalty for this citation is GRANTED and the citation is VACATED and DISMISSED.

The Secretary's motion to amend the civil penalty proposals filed in Docket VA 81-84 to reflect that citation 0685706 is in fact a section 104(a) citation rather than a section 104(b) withdrawal order was granted. In addition, counsel's motion to amend the petition to accurately reflect the Secretary's intention to seek a civil penalty assessment for citation 0685708 on the basis of a section 104(a) citation rather than an order was likewise granted.

ORDER

Respondent IS ORDERED to pay a civil penalty in the amount of \$880 in satisfaction of Citation No. 0685706, March 31, 1981, 30 CFR 75.316, and payment is to be made to MSHA within thirty (30) days of the date of this decision. Upon receipt by MSHA, the citation is severed from Docket No. VA 81-84, and MSHA's proposal for a civil penalty for this citation filed in VA 81-84, IS DISMISSED.

IT IS FURTHER ORDERED that Citation No. 0685708, April 1, 1981, 30 CFR 75.316, which has been severed from Docket VA 81-84, IS DISMISSED AND VACATED, and that portion of MSHA's civil penalty proposal seeking a penalty for this citation is DISMISSED.

IT IS FURTHER ORDERED that the contests filed by the contestant in Dockets VA 81-56-R, VA 81-57-R, and VA 81-58-R are DISMISSED.

George A. Koutras  
Administrative Law Judge