

CCASE:
SOL (MSHA) V. COLORADO WESTMORELAND
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TTEXT:

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

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

PETITIONER

v.

COLORADO WESTMORELAND, INC.,

RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 79-391
A/C No. 05-02898-03008 V
DOCKET NO. WEST 79-408
A/C No. 05-02898-03023
DOCKET NO. WEST 79-52
A/C No. 05-02898-03015 V
DOCKET NO. WEST 79-327
A/C No. 05-02898-03021
DOCKET NO. WEST 79-344
A/C No. 05-02898-03022
DOCKET NO. WEST 79-160
A/C No. 0502898-03017 V
DOCKET NO. WEST 80-77
A/C No. 05-02898-03025
DOCKET NO. WEST 79-199
A/C No. 05-02898-03020
DOCKET NO. DENV 79-511-P
A/C No. 05-02898-03012
DOCKET NO. WEST 79-99
A/C No. 05-02898-03016
DOCKET NO. WEST 79-209
A/C No. 05-02898-03018

MINE: Orchard Valley

DECISION AND ORDER

Appearances:

James H. Barkley Esq.
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United States Department of Labor
1585 Federal Building, 1961 Stout Street
Denver, Colorado 80294, for the Petitioner

Charles W. Newcom Esq.
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2900 First of Denver Plaza
633 Seventeenth Street
Denver, Colorado 80202, for the Respondent

Before: Judge John A. Carlson

STATEMENT OF THE CASE

This proceeding arose through initiation of an enforcement action brought by the Secretary of Labor, Mine Safety and Health Administration (MSHA) [hereinafter "the Secretary"], seeking the assessment of civil monetary penalties against Colorado Westmoreland, Inc. [hereinafter "Westmoreland"], for alleged

violations of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. | 801 et seq. (1978) [hereinafter cited as "the Act"]. Pursuant to notice, the matters came on for hearing in Denver, Colorado, at which time the parties proposed a negotiated settlement on the record for approval by the Commission.

DISCUSSION

In the interest of clarity and convenience, I will address the docket numbers and citations as they were presented to me on the record.

. WEST 79-391

This case involves one citation, no. 242340, alleging a violation of the mine's roof control plan. Originally a | 104(d)(1) citation with a proposed penalty of \$350.00, the Secretary moved to amend the citation to reflect a | 104(a) action, with the proposed penalty to remain at \$350.00. Westmoreland stipulated to the amendment. I find the amendment to be consistent with the purposes of the Act and therefore grant the motion.

. WEST 79-408

This case involves one order of withdrawal no. 243527, alleging a violation of the mine's roof control plan. The proposed penalty is \$305.00. Westmoreland moved for approval to withdraw its notice of contest and pay the proposed penalty. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

. WEST 79-52

This case involves one citation, no. 242557, alleging a violation of the auxiliary fans and tubing standard. The action is a | 104 (d)(1) citation with a proposed penalty of \$1,000.00. Westmoreland moved for approval to withdraw its notice of contest and pay the proposed penalty. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

. WEST 79-327

This case involves two citations, nos. 9945783 and 9945803, both alleging violations of the respirable dust reporting standard. The proposed penalties are \$66.00 and \$60.00, respectively. The Secretary moved to vacate both of the citations for lack of sufficient evidence of a violation. Westmoreland had no objection. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

. WEST 79-344

This case involves one citation no. 9945834, alleging a violation of the respirable dust reporting standard. The proposed penalty is \$44.00. The Secretary moved to vacate the citation for lack of sufficient evidence of a violation. Westmoreland had no objection. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

WEST 79-160

This case involves one order of withdrawal, no. 242193, alleging a violation of the accumulation of combustible materials standard in that sloughage from the ribs was allowed to accumulate. The proposed penalty is \$1,500.00. The Secretary moved to vacate the order on the grounds that there was substantial uncertainty as to whether or not there was a provable violation. Additionally, the inspector who issued the order is no longer employed by the Mine Safety and Health Administration and the Secretary anticipated some difficulty in obtaining his services for trial. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

WEST 80-77

This case involves one citation, no. 786452, alleging a violation of the mechanical equipment guards standard. The proposed penalty is \$140.00. Westmoreland moved for approval to withdraw its notice of contest and pay the proposed penalty. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

WEST 80-199

This case involves four citations, nos. 786331, 786337, 786343 and 786344, each involving independent contractors of Westmoreland. The proposed penalties are \$170.00, \$122.00, \$150.00 and \$56.00, respectively. Westmoreland stated that the notices of contest to the citation were filed prior to the promulgation of standards relating to citation of independent contractors and that it had no desire to litigate the legal issue. Westmoreland moved for approval to withdraw its notices of contest and pay the proposed penalties. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

DENV 79-511-P

This case involves six contested citations. The first citation, no. 9945648, alleges a violation of the respirable dust reporting standard and carries a proposed penalty of \$84.00. The Secretary moved to vacate the citation for lack of sufficient evidence of a violation. Westmoreland had no objection. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

The second citation, no. 9945673, alleges a violation of a respirable dust reporting standard in that Westmoreland failed to provide dust samples for four miners. The proposed penalty is \$84.00. The facts indicate that samples were provided for three of the four miners. The Secretary moved to amend the citation and the proposed penalty to reflect that only one miner was not sampled. The sum of \$21.00 was stipulated to be an appropriate penalty.

With the modification of the citation and proposed penalty, Westmoreland moved for approval to withdraw its notice of contest and pay the amended penalty. I find the request to be consistent with the purposes of the Act and therefore grant the motions.

The third citation, no. 245993, involves an issue as to the denial of Westmoreland's walk-around rights by virtue of the activities of the inspector, though there is no dispute over the subject matter of the citation. The proposed penalty is \$78.00. The Secretary moved to amend the proposed penalty to \$39.00 in the interest of insuring some enforcement of the citation. With the modification of the proposed penalty, Westmoreland moved for approval to withdraw its notice of contest and pay the amended penalty. I find the request to be consistent with the purposes of the Act and therefore grant the motions.

The next citation in that same docket number is no. 242556, an imminent danger order of withdrawal with a proposed penalty of \$395.00. The parties would stipulate that the facts indicate that there was no imminent danger and move that the citation reflect a | 104(a) action. The parties stipulate that the proposed penalty of \$395.00 is appropriate for the violation. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

The next citation, no. 245933, alleges a violation of the ventilation system and methane and dust control plan standard. The proposed penalty is \$38.00. Westmoreland moved for approval to withdraw its notice of contest and pay the proposed penalty. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

The final citation in this docket, no. 245992, also alleges a violation of the standard just referenced. The proposed penalty is \$38.00. Westmoreland moved for approval to withdraw its notice of contest and pay the proposed penalty. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

WEST 79-99

This case involves three citations. The first citation, no. 9945717, alleges a violation of the respirable dust reporting standard and carries a proposed penalty of \$52.00. The Secretary moved to vacate the citation for lack of sufficient evidence of a violation. Westmoreland had no objection. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

The second and third citations in this docket, nos. 242696 and 245934, allege violations of the ventilation system and methane and dust control plan standard. The proposed penalties are \$84.00 and \$130.00, respectively. Westmoreland moved for approval to withdraw its notices of contest and pay the proposed penalties. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

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WEST 79-209

This case involves two citations, nos. 9945705 and 242191, both alleging violations of a respirable dust standard. The proposed penalties are \$180.00 for each alleged violation. Westmoreland moved for approval to withdraw its notices of contest and pay the proposed penalties. I find the request to be consistent with the purposes of the Act and therefore grant the motion.

ORDER

The negotiated settlement proposed on the record is APPROVED. The respondent, Westmoreland, shall pay civil penalties in the total amount of \$3,398.00 within 30 days of the date of this Decision.

SO ORDERED.

John A. Carlson
Administrative Law Judge