

CCASE:  
SOL (MSHA) V. MONTEREY COAL  
DDATE:  
19860108  
TTEXT:

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. HOPE 79-323-P  
A.C. No. 46-05121-03008F

v.

Wayne Mine

MONTEREY COAL COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Fauver

The parties have moved for approval of a settlement to dismiss this proceeding, upon the following grounds:

1. On May 8, 1978, Section 107(a) imminent danger Withdrawal Order No. 25842 was issued to Monterey at its Wayne Mine for three alleged violations of the mandatory safety standards which are the subject of the present civil penalty proceeding.

2. The violations were issued as a result of a fatal shaft sinking accident which occurred at the mine on May 5, 1978.

3. At the time the accident occurred, the intake air shaft at the Wayne Mine was being constructed by FrontierÄKemper Constructors ("FrontierÄKemper"), an independent contractor employed by Monterey for the purpose of conducting the shaft sinking operations.

4. While the shaft sinking operations at the Wayne Mine were under the direct supervision and control of FrontierÄKemper, MSHA enforcement policy on May 8, 1978, was to cite the mine owner-operator for all violations which occurred on mine property. Therefore, Withdrawal Order No. 25842 was issued to Monterey instead of FrontierÄKemper which was actually conducting the operations which resulted in the three violations at issue.

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5. MSHA's enforcement policy with regard to issuing citations or orders to independent contractors was later revised and on July 26, 1985, Order No. 28542 was modified to include Frontier-Kemper as the operator responsible for the three alleged violations.

6. On December 13, 1985, the Secretary filed a civil penalty proceeding with this Commission against Frontier-Kemper, Docket No. WEVA 86-76, for the same three violations at issue in this proceeding. It is now the intention of the Secretary to proceed solely against Frontier-Kemper as the operator responsible for the violations at issue.

7. Therefore, the following settlement has been agreed to by the parties:

a. The Secretary will modify Order No. 28542 to delete Monterey as the cited operator; and

b. The Secretary will and hereby does move to dismiss this civil penalty proceeding against Monterey without penalty assessment.

I conclude that the settlement should be approved.

ORDER

WHEREFORE IT IS ORDERED that:

1. The motion for approval of settlement is GRANTED.
2. The hearing set for January 9, 1986, is CANCELLED.
3. This proceeding is DISMISSED.

William Fauver  
Administrative Law Judge