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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

WESTMORELAND COAL COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. VA 87-31-R
Citation No. 2753219;8/12/87

Central Machine Shop

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

v.

WESTMORELAND COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. VA 88-14
A.C. No. 44-03108-03507

Central Machine Shop
ID No. 44-03108

DECISION

Appearances: F. Thomas Rubenstein, Esq., Westmoreland Coal
Company, Big Stone Gap, VA, for Respondent;
James B. Crawford, Esq., Office of the Solicitor, U.S.
Department of Labor, Arlington, VA, for Petitioner.

Before: Judge Fauver

In these consolidated proceedings Westmoreland Coal Company
seeks to vacate Citation No. 2753219 under 105(d) of the
Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et
seq., and the Secretary of Labor seeks a civil penalty under
110(i) of the Act for the violation cited.

Based upon the hearing evidence and the record as a whole, I
find that a preponderance of the substantial, reliable and
probative evidence establishes the following:

FINDINGS OF FACT

1. Westmoreland owns and operates a surface facility near
Stonega, Virginia, which includes (1) a building housing a

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central warehouse and a central machine shop and (2) a fuel depot that includes gasoline and diesel storage tanks and fuel pumps to service Westmoreland's vehicles.

2. The warehouse and machine shop are in the same building, but are separated by a wall and a security "airlock" room. They are managed by separate departments and personnel and their employees are not interchanged.

3. The warehouse stores and distributes parts, supplies, and equipment used by a number of Westmoreland's coal mines, the nearest one being 2.5 miles away, and the machine shop repairs and maintains equipment used in those mines.

4. The fuel depot, which is on the same property and about 200 to 300 feet from the warehouse/machine shop building, includes four 6,000 gallon storage tanks, fuel pumping filler pipes and fuel pumps to service vehicles. Only authorized Westmoreland vehicles may use the fuel pumps; these include vehicles that regularly transport employees, mining supplies, parts, and equipment to and from Westmoreland's coal mines.

5. On August 12, 1987, MSHA Inspector Daniel S. Graybeal issued Citation No. 2753219 charging a violation of 30 C.F.R. 77.1103(d) based upon the following alleged condition:

The 2400 gallon fuel storage depot was not kept free of combustible weeds and dry grass for a distance of 25 ft. as described below: vegetation ranging up to 18 inch[es] high had grown up to within 10 ft. of the four tanks on 3 sides and within 5 ft. of the fuel pumping filler pipes. The vegetations consist of weeds and dry grass. The fuel tanks were capable of containing 12000 gal. of gasoline and the same amount of diesel fuel.

6. The factual allegations in the citation were proved by substantial and convincing evidence and are incorporated as findings of fact.

DISCUSSION WITH FURTHER FINDINGS

Section 3(h)(1) of the Act defines a "mine" broadly, as follows:

(h)(1) "coal or other mine" means (A) an area of land from which minerals are extracted in nonliquid form or, if in

liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

* * *

In U.S. Steel Mining Company, Inc., 10 FMSHRC 146 (1988), the Commission considered whether the Act applied to a mine operator's repair shop that repaired equipment used in its nearby coal mines. The Commission found it unnecessary to decide whether the repair shop was a "surface installation" of a coal mine and held, instead, that the "shop itself is a separate surface 'coal mine' within the meaning of the Act"

In W.F.Saunders & Sons, 1 FMSHRC 2130 (Decision of ALJ, 1979), Judge Melick held that a storeroom owned by a mine operator was subject to the Act because parts and equipment stored there were regularly used in the operator's work of extracting coal.

The Secretary contends that Westmoreland's fuel depot is a separate surface coal mine and, alternatively, that it is a functional part of the machine shop, which is acknowledged to be a covered mine. Westmoreland contends that the fuel depot is not a separate coal mine, but is a functional part of the central warehouse, not the machine shop, and therefore is not subject to the Act.

I hold that the fuel depot is itself a separate surface coal mine within the meaning 3(h)(1) of the Act. The fuel depot is used only by Westmoreland's vehicles, including vehicles used on a regular and substantial basis to transport personnel, parts, supplies and equipment used in the work of extracting coal from Westmoreland's mines.

The standard cited in Citation No. 2753219 (30 C.F.R. 77.1103(d)) requires that:

(d) Areas surrounding flammable liquid storage tanks and electric substations and transformers shall be kept free from grass (dry), weeds, underbrush,

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and other combustible materials, such as trash, rubbish, leaves and paper, for at least 25 feet in all directions.

The Secretary proved a violation of this standard by a preponderance of the evidence. Considering the criteria for a civil penalty in 110(i) of the Act, I find that the Secretary's proposed penalty of \$78 is appropriate.

CONCLUSIONS OF LAW

WHEREFORE IT IS ORDERED that:

1. Citation No. 2753219 is AFFIRMED.
2. Westmoreland Coal Company shall pay the above civil penalty of \$78 within 30 days of this Decision.

William Fauver
Administrative Law Judge