CCASE:
WESTWOOD ENERGY PROPERTIES V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

WESTWOOD ENERGY PROPERTIES,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. PENN 88-42-R
Citation No. 2675834; 10/27/87

Docket No. PENN 88-43-R
Order No. 2675835; 10/27/87

Docket No. PENN 88-73-R
Citation No. 2675836; 11/14/87

Docket No. PENN 88-74-R
Citation No. 2675837; 11/14/87

Docket No. PENN 88-75-R
Citation No. 2675838; 11/14/87

Docket No. PENN 88-76-R
Citation No. 2675839; 11/14/87

Docket No. PENN 88-77-R
Citation No. 2675840; 11/14/87

Docket No. PENN 88-78-R
Citation No. 2675861; 11/14/87

Docket No. PENN 88-79-R
Citation No. 2675862; 11/14/87

Docket No. PENN 88-80-R
Citation No. 2675863; 11/14/87

Docket No. PENN 88-81-R
Citation No. 2676577; 11/14/87

Docket No. PENN 88-82-R
Citation No. 2676578; 11/14/87

Docket No. PENN 88-83-R
Citation No. 2676579; 11/14/87

Docket No. PENN 88-84-R
Citation No. 2677901; 11/14/87

Docket No. PENN 88-85-R
Citation No. 2677902; 11/14/87

Docket No. PENN 88-86-R
Citation No. 2677903; 11/14/87

Docket No. PENN 88-87-R
Citation No. 2677904; 11/14/87

Docket No. PENN 88-88-R
Citation No. 2677905; 11/14/87

Docket No. PENN 88-89-R
Citation No. 2677906; 11/14/87

Refuse Culm Bank

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

CIVIL PENALTY PROCEEDING

Docket No. PENN 88-148
A.C. No. 36-07888-03501

v.

Refuse Culm Bank

WESTWOOD ENERGY PROPERTIES,
RESPONDENT

DECISION

Appearances: Mark V. Swirsky, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, on behalf of the Secretary of Labor (Secretary); Joseph Mack, III, Esq., Thorp, Reed and Armstrong, Pittsburgh, Pennsylvania, on behalf of Westwood Energy Properties (Westwood).

Before: Judge Broderick

STATEMENT OF THE CASE

Westwood filed notices of contest challenging the legality of the issuance of 18 citations and one withdrawal order issued by the Secretary's representatives. The Secretary filed a Petition for the assessment of civil penalties for the violations charged in the contested citations. The contested order was issued under section 104(b) of the Act for failure to comply with a citation issued for Westwood's refusal to permit MSHA to enter the site of the facility for the purpose of conducting an inspection. The citations contested in Docket Nos. PENN 88-84-R through PENN 88-89-R, namely citations 2677901, 2677902, 2677903, 2677904, 2677905 and 2677906 have been vacated by MSHA and reissued as citations 2677913, 2677914, 2677915, 2677916,

2677917, and 2677918. The parties have stipulated that the reissued citations shall be considered as contested in these proceedings.

The primary issue in the case is whether Westwood's facility is a mine within the meaning of that term in the Mine Act, and therefore subject to the jurisdiction of MSHA. Pursuant to notice the case was heard in Harrisburg, Pennsylvania on September 20, 1988. Joseph Uholic and Charles Rosini testified on behalf of the Secretary. Charles Ludwigson testified on behalf of Westwood. Both parties have filed post-hearing briefs. I have considered the entire record and the contentions of the parties in making the following decision.

FINDINGS OF FACT

1. The Facility

Westwood is the owner of a piece of land in Schuylkill County near Tremont, Pennsylvania. A large culm bank or refuse pile is located on the land. The bank is cone shaped, approximately 4500 feet in circumference at the bottom, and 350 feet at the top. It is about 275 feet high. The bank was created as the refuse product of an underground anthracite coal mine and its preparation plant, called Westwood Colliery, which operated from 1913 to 1947. The preparation plant itself was destroyed and its remains became part of the refuse pile. After the underground mine was closed, a company named Manbeck operated a "fine" coal plant, separating fine coal from the waste material and selling it. Manbeck was inspected by MSHA or its predecessor agency.

The culm owned by Westwood contains coal mine refuse, including rock, slate, shale, wood, metal, both ferrous and nonferrous, granite, quartz, pyrite, and a small percentage of coal and other carbonaceous material. (Some authorities limit the term coal to carbonaceous rock which when dried at 100 degrees centigrade should contain at least 50 percent combustible material. See A DICTIONARY OF MINING, MINERAL and RELATED TERMS, U.S. Dept. of the Interior, page 222).

Westwood uses the material in the culm bank as fuel to generate electrical power which is sold to the Metropolitan Edison Company. Westwood engaged a contractor to remove the material from the bank and load it into hoppers where wood and other materials larger than 12 by 12 inches are removed. Metal is removed by means of a magnet and a metal detector. The culm material is then transported to a silo and crushed in two steps to a particle size of one-eighth of an inch. It is then transported to the combuster where it is burned in a process

called a circulating fluidized bed process of combustion. This process results in steam which drives turbines and creates electrical power. The fuel has a BTU content of from 2700 to 4000. The BTU content of anthracite coal ranges from 12,000 to 15,000. After combustion, approximately 65 to 68 percent by weight of the original fuel is removed as ash, and transported to an ash pile.

2. The Inspection

On October 27, 1987, Federal coal mine inspector Joseph Uholic arrived at Westwood's culm bank site to conduct an inspection of the facility. Westwood denied him entry. On October 28, 1987, Uholic returned, accompanied by Inspector Charles Rosini, pursuant to instructions from his supervisor. Westwood informed them that an inspection would not be permitted on the advice of counsel that the operation was not subject to MSHA jurisdiction. Inspector Uholick issued a citation under section 104(a) of the Act, charging a violation of 103(a) of the Act for failure to permit the inspector to enter the mine site. After approximately 40 minutes, the inspector issued a withdrawal order under section 104(b) of the Act for failure to abate the citation. The Secretary then sought an injunction from the United States District Court to require Westwood to permit the inspection. A consent temporary restraining order was issued permitting MSHA inspections until a final adjudication of the issue of jurisdiction by the Review Commission. The inspectors returned to the facility on November 14, 1987, conducted an inspection and issued the other citations which are involved in this proceeding.

The parties have stipulated that since becoming operational in July 1988, Westwood has sustained net losses in its operation. At the time the citations involved herein were issued, the work was being done by the construction contractor and its approximately 30 to 35 employees, but Westwood was in overall control of the worksite. The violations charged in the citations issued on November 14, 1987, are admitted by Westwood (assuming jurisdiction), but it does not stipulate to the significant and substantial designation, nor to the appropriateness of the proposed penalties.

STATUTORY PROVISIONS

Section 3(h)(1) of the Act provides:

> (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 making a determination of what constitutes mineral milling for purposes of this Act, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment;

Section 3(i) of the Act provides:

> (i) "work of preparing the coal' means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storage, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine;

THE MSHA-OSHA INTERAGENCY AGREEMENT

The Mine Safety and Health Administration and the Occupational Safety and Health Administration, both agencies within the U.S. Department of Labor, entered into an agreement on March 29, 1979, "to delineate certain areas of authority, set forth factors regarding determinations relating to convenience of administration, provide a procedure for determining general jurisdictional questions. . . " The agreement is set out in 44 F.R. 22827 (April 17, 1979). In general the dividing line between MSHA and OSHA jurisdiction is the point where the raw materials arrive at the plant stockpile. The agreement contains a definition and description of "milling", which comes under the Mine Act.

ISSUES

1. Whether the subject culm bank is a mine, and whether Westwood's activities in preparing it for use as fuel in generating electricity is subject to the Mine Act?

2. If Westwood comes under the jurisdiction of the Mine Health and Safety Administration, whether the cited violations were significant and substantial?

3. If Westwood comes under the MSHA's jurisdiction, what are the appropriate penalties for the cited violations?

CONCLUSIONS OF LAW

STATUTORY DEFINITIONS

In ordinary parlance, the culm bank owned by Westwood would not be considered a mine. It is not "an opening or excavation in the earth for the purpose of extracting minerals" (A DICTIONARY OF MINING, MINERALS AND RELATED TERMS, supra, p. 708). Westwood's use of the culm material does not involve the extraction of minerals from their natural deposits in the earth. The statutory definition of a mine, however, is much broader than the generally accepted meaning of the term. It includes "lands, . . . facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground . . . resulting from the work of extracting such minerals from their natural deposits, . . . or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals . . . " [Section 3(h)(1)]. The Westwood culm bank clearly resulted from the work of extracting anthracite coal from its natural deposit in the earth. A literal construction of the statutory language would seem to cover Westwood's culm bank. Westwood argues that such a construction is "overly literalistic," and that "as a matter of practical or economic reality," Westwood's operation cannot be considered mining activity. The construction of the statutory language and its application to the subject operation is clearly complicated by the fact that the underground anthricite mine, the operation of which resulted in the culm, has been closed for 40 years. Westwood had no connection with the extraction of the anthracite or the culm from underground. It seems clear that if the anthracite mine continued in operation and the operator disposed of the coal, and at the same time used the culm or waste in the same way that Westwood does to generate electricity, the entire operation would be considered a mine and subject to the Act. Is it significant that Westwood had nothing to do with the coal extraction? Is it significant that the mine has been closed? Does the length of time it has been closed make any difference?

The statute [Section 3(i)] defines the work of preparing coal as "the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine."

A literal reading of this definition would seem to cover Westwood's operation described in the findings of fact herein. The culm material contains anthracite coal. Westwood breaks, crushes, sizes, stores and loads it in preparation for its use as fuel.

LEGISLATIVE HISTORY

In enacting the 1977 Mine Act Congress clearly intended that its coverage be as broad as possible: "It is the Committee's intention that what is considered to be a mine and to be regulated under this Act be given the broadest possible interpretation, and it is the intent of the Committee that doubts be resolved in favor of inclusion of a facility within the coverage of the Act." S. Rep. No. 181, 95th Cong., 1st Sess. 14 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 602 (Legis. Hist.). The joint explanatory statement of the Committee of Conference refers to the definition of a mine: "Both the Senate bill and the House amendment broadly defined mine to include all underground or surface areas from which the mineral is extracted, and all surface facilities used in preparing or processing the minerals, as well as roads, structures, dams, impoundments, tailing ponds and like facilities related to the mining activity." Legis. Hist. at 1316.

The Secretary of Labor is given the initial responsibility for determining whether a facility is subject to the Mine Act. She is in a unique position to determine the dividing line between MSHA and OSHA jurisdiction, since both programs are administered by her. I assume that the issuance of citations by MSHA to Westwood reflects the Secretary's determination that the subject facility is a mine and therefore is subject to the Mine Act. Although such a determination is not binding on the Commission, it must be accorded great weight in our consideration of the jurisdictional question.

COURTS OF APPEALS AND DISTRICT COURT DECISIONS

The case of Marshall v. Stoudt's Ferry Preparation Co., 602 F.2d 589 (3rd Cir. 1979) cert. denied, 444 U.S. 1015 (1980), involved a company, Stoudt's Ferry, which purchased material dredged from the Schuylkill River by the Commonwealth of Pennsylvania. Stoudt's Ferry then transported the material to its plant where it separated it into sand and gravel, and a material usable as a fuel. The latter was sold to a utility company as "usable anthracite refuse." The court held that the process of separating the burnable product from the dredged

material brought Stoudt's Ferry within the coverage of the Act. The Court said at page 592: "Although it may seem incongruous to apply the label "mine' to the kind of plant operated by Stoudt's Ferry, the statute makes clear that the concept that was to be conveyed by the word is much more encompassing than the usual meaning attributed to it -- the word means what the statute says it means."

In the case of Harman Mining Corp. v. Federal Mine Safety and Health Review Commission, 671 F.2d 794 (4th Cir. 1981), the Court held that railroad "car dropping" activities of a mining corporation, incident to the loading and storage of coal after it had been prepared, took place at a mine and were subject to MSHA jurisdiction, even though the railroad tracks and cars were owned by the railroad and some of the car dropping activities were performed by railroad employees.

The District of Columbia Circuit reversed the Review Commission in Donovan v. Carolina Stalite Company, 734 F.2d 1547 (D.C. Cir. 1984). The court held that Carolina's slate gravel processing facility which did not extract the slate but "bloated" it, and crushed and sized the resultant product (called "stalite"), and sold it for use in making concrete blocks was subject to the Mine Act. The Court said at page 1552 that the statute "gives the Secretary discretion, within reason, to determine what constitutes mineral milling, and thus indicates that his determination is to be reviewed with deference both by the Commission and the courts . . . . In this highly technical area deference to the Secretary's expertise is especially appropriate . . . . The Commission, so far as we can see, gave the Secretary's determination no deference, and we believe that was error."

The term milling is used, at least primarily, with reference to metal mining. See A DICTIONARY, supra, p. 706. It refers to the grinding or crushing of ore, and is ordinarily performed in a mill. The MSHA-OSHA Interagency Agreement defines it a "the art of treating the crude crust of the earth to produce therefrom the primary consumer derivatives". The analogous process in coal mining is the work of preparing coal. (Compare MILLING AND CRUSHING, U.S. Dept. of Interior, National Mine Health and Safety Academy (1978) with COAL PREPARATION HANDBOOK, U.S. Dept. of Labor, National Mine Health and Safety Academy (n.d.).) It is ordinarily performed in a preparation plant. The Secretary's determination that an activity constitutes the work of preparing coal, like her determination that an activity constitutes milling, is a highly technical matter, and must be accorded deference by the Review Commission.

In Old Dominion Power Co. v. Donovan, 772 F.2d 92 (4th Cir. 1985), the Court reversed a Commission determination that Old Dominion was subject to MSHA jurisdiction when it maintained an electrical substation on coal mine property. The substation was used to meter the amount of electricity purchased by the mine operator. The court held that Congress intended to exclude electric utilities from Mine act coverage, when the utility's only presence on the mine site is to read the meter and occasionally service its equipment. The Court declined to accord deference to MSHA's interpretation of the statutory grant of jurisdiction.

The United States District Court for the Southern District of Indiana in Donovan v. Inland Terminals, 3 BNA MSHC 1893 (1985), denied the Secretary's motion for a preliminary injunction to prohibit denial of entry to an MSHA inspector. Inland operated a commercial loading dock and stockpiled coal. It utilized loaders, crushers, and hoppers to facilitate its loading operation. The court held, citing the Commission's Elam decision, infra, that the facility was not a mine, and therefore was not subject to the coverage of the Mine Act.

COMMISSION AND ADMINISTRATIVE LAW JUDGE DECISIONS

In the case of Oliver M. Elam, 4 FMSHRC 5 (1982), the Commission determined that Elam's commercial dock on the Ohio River from which coal and other materials were loaded onto barges was not a mine subject to the Act. Elam's facilities for loading coal included a hopper, a crusher, and conveyor belts. Occasionally large pieces of coal were broken by Elam to pass through the hopper. The crusher then broke the coal into one size in order that it might be carried on the conveyor belts. The Commission looked at the statutory definition of "work of preparing coal," and concluded that "inherent in the determination of whether an operation properly is classified as "mining' is an inquiry not only into whether the operation performs one or more of the listed work activities, but also into the nature of the operation performing such activities." 4 FMSHRC at 7. "[W]ork of preparing coal connotes a process, usually performed by the mine operator engaged in the extraction of the coal or by custom preparation facilities, undertaken to make coal suitable for a particular use or to meet market specifications." 4 FMSHRC at 8. Elam's work in crushing and sizing coal was performed to facilitate its loading business and not to render the coal fit for any particular use. It therefore was not engaged in the work of preparing coal and did not operate a mine.

Alexander Brothers, Inc.,4 FMSHRC 541 (1982), arose under the 1969 Coal Act.(FOOTNOTE 1) It involved the reclamation of coal from a refuse pile created during the operation of an underground mine which was closed in 1967. The refuse pile contained coal, rock, dust, garbage, timber, wood, steel, dirt, tin cans, bottles, metal and general debris. Approximately 20 to 25 percent of the material taken from the pile was coal. The material was removed from the pile and trucked to a screening plant, where rock and obvious waste were removed. It was then crushed and transported to a cleaning plant. Noncoal was removed by various processes. The resultant coal was then sold to brokers. The Commission determined that Alexander Brothers were engaged in the work of preparing coal. The facts that they had nothing to do with the extraction of coal, and that their work in removing the debris from the coal differed from the ordinary preparation plant did not remove them from the jurisdiction of the Coal Act.

In Mineral Coal Sales, Inc.,7 FMSHRC 615 (1985) coal was delivered to Mineral by brokers. Mineral tested the coal to determine the BTU, ash and sulfur content. It then crushed the coal to a uniform size and loaded it on railroad cars. The Commission held that Mineral's business constituted mining since it stored, mixed, crushed, sized and loaded coal to make it suitable for a particular use.

In the case of VenBlack, Inc. v. Secretary,7 FMSHRC 520 (1985), Commission Judge Lasher considered whether VenBlack which purchased already prepared coal and converted it into a powdery substance called Austin Black which was then sold to the tire and rubber industry as a chemical additive was subject to the Mine Act. The purchased coal was unique and had to meet VenBlack's specifications. VenBlack pulverized the coal to a fine dust having the consistency of talcum powder. The facility had been purchased from a coal company which operated a coal mine and preparation plant as well as the chemical facility producing Austin Black. The entire operation was inspected by MSHA. The mine and preparation plant had been closed and VenBlack had no connection with the mining property. Judge Lasher concluded that VenBlack was engaged in manufacturing operations, and was not a secondary coal preparation facility. VenBlack did not produce or prepare coal, but, using already prepared coal, manufactured and marketed a chemical additive.

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In a case under the Coal Act, Jones and Laughlin Steel Corporation v.MESA, Docket No. PITT 76X198, Chief Administrative Law Judge Luoma of the Department of the Interior decided on February 22, 1977, that a refuse pile on applicant's land was part of a coal mine and subject to the Act. The refuse pile consisted of material taken directly from the mine, such as waste from roof falls, construction material, etc. It apparently was largely slate but contained some coal. The refuse pile was approximately 50 years old and had not been used since 1967. Judge Luoma concluded that the refuse pile was a surface area of the mine, since it was "composed of material which resulted from, the work of extracting coal."

CONCLUSION

Westwood argues that "it is a power plant, pure and simple"; that is utilizes a stockpile of fuel as a conventional power plant would use a stockpile of coal. It consumes fuel and does not produce a marketable mineral. Westwood's argument emphasizes the latter distinction as if the marketing of coal or other mineral is essential to the idea of mining or coal preparation. But it is not uncommon for mine operators to themselves consume the products of their mines. And Westwood does more than burn the culm material; it prepares it "for a particular use." Elam, supra: it extracts the culm from the bank and loads it into hoppers, where certain waste materials are removed; it then transports it on a conveyor belt where ferrous metals are removed by a magnet; thereafter a metal detector seeks other metals which are rejected. The residual fuel is then crushed or sized to particles approximately one quarter inch in size. All this takes place prior to the fuel being introduced into the boiler building. These activities closely resemble the "work of preparing the coal" as defined in the Act.

I am persuaded that the sweeping definition of a coal or other mine in the Act, and the admonition in the Legislative History that the term be given the broadest possible interpretation brings Westwood's facility within its terms. Any doubt that the culm bank is or includes "lands ..., structures, facilities, ... or other property including impoundments,...on the surface or underground, used in,...or resulting from the work of extracting such minerals from their natural deposits. . ." must be resolved in favor of coverage.

I am further persuaded that Westwood's use of the culm includes the work of preparing the coal, since it breaks, crushes, sizes, stores and loads anthracite, and does other work of preparing coal usually done by the operator of a coal mine.

In both of these conclusions, I am giving deference to the determination by the Secretary of Labor that Westwood's facility and operation are subject to the Mine Act.

THE VIOLATIONS

1. Denial of Entry

Westwood asserts that its refusal to permit MSHA inspectors to inspect its property was based on a reasonable, good faith belief that it was not subject to the Mine Act. There is no evidence in the record to cast doubt on Westwood's bona fides. Its operation had been previously been inspected by OSHA. Although it refused entry to the MSHA inspectors after the issuance of the citation and a 104(b) order issued for noncompliance, it fully cooperated with the Inspectors after the consent order was issued by the District Court. Nevertheless, the refusal to permit MSHA inspectors to conduct an inspection of the facility was, in view of my conclusion that it was a mine, a serious violation. Westwood was working on a high wall with a significant grade. The conditions of the highwall, the equipment, the training and competence of the employees could not be evaluated without an inspection. I conclude that the violation contributed to a hazard and that there was a reasonable likelihood that the hazard would result in a serious injury or illness. U.S. Steel Mining Company, Inc., 10 FMSHRC 1138 (1988). Although Westwood's denial of entry was deliberate, it acted in good faith. Considering the criteria in section 110(i) of the act, I conclude that an appropriate penalty for the violation is $300.

2. Failure to File with MSHA

Citation 2675836 charges a violation of 30 C.F.R. 41.11(a) because Westwood failed to submit a legal identification form to MSHA; citation 2675837 charges a violation of 30 C.F.R. 77.1000 because Westwood failed to submit to MSHA for approval a ground control plan; citation 2676579 charges a violation of 30 C.F.R. 48.23(a)(1) because Westwood failed to file a training plan with MSHA; citation 2676577 charges a violation of 30 C.F.R. 77.1712 because Westwood failed to notify the MSHA District Manager prior to beginning operation; citation 2676578 charges a violation of 30 C.F.R. 77.1713 because the person conducting on-shift inspections had not been certified by MSHA. These violations are all related to Westwood's belief that it was not subject to MSHA jurisdiction. They are not serious since they were not likely to result in, or contribute to, an injury to a miner. I conclude that $20 is an appropriate penalty for each violation.

3. Other Violations not Related to Training Requirements

Citation 2675839 charges a violation of 30 C.F.R. 77.1710(i) because a bulldozer being used to push bank material on top of the refuse bank was not provided with seat belts. The dozer was being operated on a 30 degree grade and the bank was over 200 feet high. I conclude that the violation contributed to a hazard which was reasonably likely to result in serious injury. Westwood was aware or should have been aware of the hazardous condition. I conclude that an appropriate penalty for this violation is $100.

Citations 2675840 and 2675863 charge violations of 30 C.F.R. 77.1109(c)(1) because a bulldozer and a loader were no provided with fire extinguishers. The inspector considered the violations nonserious. I conclude that appropriate penalties for the violations are $20 each. Citations 2675838 and 2675861 charge violations of 30 C.F.R.   77.410 because a loader was not provided with a functioning back up alarm. The inspector considered the violations nonserious. I conclude that an appropriate penalty for each violation is $20. Citation 2675862 charges a violation of 30 C.F.R.   77.1710(i) because a front end loader was not provided with seat belts. Because the loader was working at the ground level, the inspector considered the violation nonserious. I conclude that an appropriate penalty for the violation is $20.

4. Training Violations

Citations 2677913 through 2677918 (replacing 2677901 through 2677906) all charge violations of 30 C.F.R.   48.26(a) because six employees had not received training as newly employed experienced miners. The employees had not previously worked on a culm bank, which in the inspector's judgment presented unique hazards. Therefore, the lack of such training contributed to a hazard which was reasonably likely to result in serious injury. The violations were moderately serious. The Secretary failed to establish that the violations were caused by Westwood's negligence. I conclude that $50 is an appropriate penalty for each violation.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED:

1. The contested violations and withdrawal order are AFFIRMED;

2. the Notices of Contest are DISMISSED;

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3. Westwood shall within 30 days of the date of this decision pay the following civil penalties:

CITATION	VIOLATION		AMOUNT
2675834/835	103(a)		$300
2675836	30 C.F.R.	41.11(a)	20
2675837	30 C.F.R.	77.1000	20
2676579	30 C.F.R.	48.23(a)(1)	20
2676577	30 C.F.R.	77.1712	20
2676578	30 C.F.R.	77.1713	20
2675839	30 C.F.R.	77.1710(i)	100
2675840	30 C.F.R.	77.1109(c)(1)	20
2675863	30 C.F.R.	77.1109(c)(1)	20
2675838	30 C.F.R.	77.410	20
2675861	30 C.F.R.	77.410	20
2675862	30 C.F.R.	77.1710(i)	20
2677913	30 C.F.R.	48.26(a)	50
2677914	30 C.F.R.	48.26(a)	50
2677915	30 C.F.R.	48.26(a)	50
2677916	30 C.F.R.	48.26(a)	50
2677917	30 C.F.R.	48.26(a)	50
2677918	30 C.F.R.	48.26(a)	50
			$900

James A. Broderick
Administrative Law Judge

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FOOTNOTES START HERE

~FOOTNOTE_ONE

1 The definitions of "mine" and "the work of preparing the coal" in the 1969 Act did not differ significantly from the definitions in the 1977 Mine Act.