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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
PENN 88-43-R

AND

PENN 88-73-R
TRHU PENN 88-89-R

Refuse Culm Bank

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

v.

CIVIL PENALTY PROCEEDINGS

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

Refuse Culm Bank

WESTWOOD ENERGY PROPERTIES,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER OF DISMISSAL

Before: Judge Broderick

By Decision issued December 20, 1989, the Commission remanded these cases to me to determine whether the Secretary properly exercised her authority to regulate the cited working conditions at the subject facility. By order issued January 22, 1990, I granted Westwood's motion to reopen discovery and I extended the time for prehearing submissions. Extensive discovery including interrogatories, production of documents and a deposition was conducted between January and March 1990.

On August 1, 1990, the Secretary filed a motion to approve a settlement between the parties and to dismiss these proceedings. The settlement agreement provides that Westwood will withdraw its contest proceedings and pay the \$900 in civil penalties assessed in my decision of January 26, 1989. It further provides that MSHA will not assert jurisdiction over Westwood's facility in the future, so long as Westwood does not materially change the manner in which it processes culm as described in the Commission decision. If MSHA determines that a material change has occurred and decides to reassert its jurisdiction, it will so notify Westwood. Westwood does not admit MSHA's jurisdiction over any portion of the Westwood facility and its withdrawal of the

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notices of contest is without prejudice to its right to contest any future assertion of jurisdiction by MSHA.

I have considered the motion in the light of the Commission Decision of December 20, 1989, and in the light of the provisions of section 110(i) of the Act and conclude that it should be approved.

Accordingly, the settlement agreement is APPROVED, and Westwood is ORDERED TO PAY the sum of \$900 within 30 days of the date of this order.

IT IS FURTHER ORDERED that subject to the payment of the above penalty the captioned contest and civil penalty proceedings are DISMISSED.

James A. Broderick
Administrative Law Judge