

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1244 SPEER BOULEVARD #280  
DENVER, CO 80204-3582  
303-844-3993/FAX 303-844-5268

December 17, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 97-293-M
Petitioner	:	A.C. No. 26-00062-05543
	:	
v.	:	
	:	Genesis
NEWMONT GOLD COMPANY,	:	
Respondent	:	

**ORDER OF DISMISSAL**

**ORDER DENYING PETITIONER-S MOTION FOR STAY ORDER**

The above-captioned penalty proceeding consists of a petition for assessment of civil penalties for four vacated citations. These four citations were vacated and dismissed by the presiding Administrative Law Judge in his October 14, 1997, decision in the consolidated contest proceeding, 19 FMSHRC 1640 (Oct. 1997). All four citations were vacated after a full two day contested evidentiary hearing on the merits in Docket Nos. WEST 97-164-RM, WEST 97-165-RM, WEST 97-166-RM and WEST 97-167-RM, 19 FMSHRC 1640 (Oct. 1997).

A few days after the ALJ's October 14, 1997, decision vacating and dismissing the citations, the Solicitor on October 20, 1997, filed this Petition for civil penalty for each of the four vacated citations. On October 24, 1997, Respondent filed an answer and a motion to Dismiss the Secretary's petition of civil penalties for the four vacated citations. Respondent's motion for dismissal was based on the ALJ's October 14, 1997, decision in the consolidated contest proceedings WEST 97-164-RM through WEST 97-167-RM, 19 FMSHRC 1640 (Oct. 1997).

In November 1997, the Solicitor filed a written request for additional time to respond to Respondent's Motion to Dismiss the present civil penalty proceeding and on December 1, 1997, filed a Motion For Stay of Proceedings in this case stating that the ALJ's October 14, 1997, decision which vacated the four citations in question is now subject of a Petition for Discretionary Review.

On consideration of this matter I find no justification in the record before me to grant Petitioner's extraordinary motion for a stay of the present proceedings *cf.* W.S. Frey Co., Docket Nos. VA 93-59-M *et al.*, 16 FMSHRC 1591 (Aug. 5, 1994), 1 MSHN 409 (Aug. 12, 1994). The

Petitioner's motion is denied and the Solicitor's petition for assessment of civil penalty for each of four vacated citations in Docket No. WEST 97-293-M is denied. There being no enforcement document in this docket other than the four vacated citations, this case is **DISMISSED**.

August F. Cetti  
Administrative Law Judge

Distribution:

Steven R. DeSmith, Esq., Jan M. Coplick, Esq., Office of the Solicitor, U.S. Department of Labor, 71 Stevenson St., Suite 1110, San Francisco, CA 94105

David Farber, Esq., PATTON BOGGS, LLP, 2550 M Street, NW, Washington, DC 20037

/sh

