

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, DC 20001

August 22, 2003

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2003-347-M
Petitioner	:	A.C. No. 45-03260-00000
	:	
v.	:	
	:	
GRAYMONT WESTERN U.S., INC.,	:	
Respondent	:	Tacoma Plant

**DECISION APPROVING SETTLEMENT**

Before: Judge Feldman

This civil penalty matter concerns a discrimination complaint filed pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(3) (1994) (the “Act”), by James Womack against Graymont Western US Inc. (“Graymont”). Following an evidentiary hearing, it was determined that Graymont’s termination of Womack’s employment violated section 105(c) of the Act. *Decision on Liability*, 25 FMSHRC 235 (May 2003) (ALJ). After filing proposals for relief, the parties agreed to settle this matter. On August 20, 2003, I issued a *Supplemental Decision and Final Order Approving Settlement*. The parties agreed that the settlement terms would remain confidential. Consequently, the settlement agreement was placed under seal subject to review only by the Commission or other appellate body.

In accordance with the provisions of Commission Rule 44(b), 29 C.F.R. § 2700.44(b), the Secretary was provided with a copy of the *Decision on Liability* so that she could initiate a civil penalty proceeding for the subject 105(c) violation. 25 FMSHRC at 265. As a consequence of Womack’s discrimination case, on June 17, 2003, the Secretary filed a petition for assessment of civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act) that has been assigned as Docket No. WEST 2003-347-M. The Secretary’s petition sought to impose a \$12,000 civil penalty.

On July 17, 2003, the Secretary filed a motion to approve a settlement agreement and to dismiss this case. A reduction in civil penalty from \$12,000 to \$5,000 is proposed. The settlement terms stipulate that nothing in the parties’ agreement shall be construed as an admission by Graymont that it violated section 105(c) of the Mine Act. *See Amax Lead Company of Missouri*, 4 FMSHRC 975, 980 (June 1982) (a violation is established for Mine Act purposes as a consequence of a settlement even though the respondent does not admit that a violation occurred).

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the motion for approval of settlement **IS GRANTED**, and **IT IS ORDERED** that Graymont Western US Inc., pay a civil penalty of \$5,000 within 30 days of this Decision, and, upon receipt of timely payment, the civil penalty matter in Docket No. WEST 2003-347-M is case **IS DISMISSED**.

Jerold Feldman  
Administrative Law Judge

Distribution:

Edward H. Fitch, Esq., Office of the Solicitor, U.S. Department of Labor,  
1100 Wilson Boulevard, 22<sup>nd</sup> Floor, Arlington, VA 22209-3939

Robert Leinwand, Esq., Stole Rives, LLP, 900 S.W. Fifth Avenue, Suite 2600,  
Portland, OR 97204

/hs