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WESTERN FUELS-UTAH V. MSHA
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FMSHRC-WDC
May 12, 1988

WESTERN FUELS-UTAH, INC.

v. Docket No. WEST 86-108-R

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

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

v. Docket No. WEST 86-245

WESTERN FUELS-UTAH, INC.

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

The Commission issued its decision in this matter on March 25, 1988, affirming the decision of Commission Administrative Law Judge Roy J. Maurer, in which the judge concluded Western Fuels-Utah, Inc. ("Western Fuels") was liable for a violation of a mandatory safety standard and assessed a civil penalty of \$250 for the violation. 10 FMSHRC 256 (March 1988). On April 22, 1988, Western Fuels filed a petition for review of the Commission's decision in the United States Court of Appeals for the District of Columbia Circuit (No. 88-1313). In connection with its appeal, Western Fuels has submitted to the Commission a motion requesting a stay of the Commission's decision, during the pendency of judicial review, insofar as that decision requires payment of the \$250 civil

penalty. See 30 U.S.C. § 816(c); Fed. R. App. P. 18. Counsel for the Secretary of Labor has filed an opposition to this motion, which states in part:

While a contested civil penalty continues to be litigated, the Mine Safety and Health Administration Office of Assessments routinely suspends any action to collect the [civil penalty] monies involved.

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This policy has been and continues to be followed in this case.

Secretary's Opposition at 1. Given the Secretary's representation that the Department of Labor will not attempt to collect the civil penalty involved in this matter during the pendency of appellate litigation, there is no need for a stay of the Commission's decision.

Accordingly, upon consideration of the motion and opposition, the motion is denied.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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Distribution

Karl F. Anuta, Esq.
2120 13th St.
P.O. Box 1001
Boulder, Colorado 80306

Frederick L. Miller, Jr., Esq.
Jeffery N. Luthi, Esq.
Duncan, Weinberg, Miller & Pembroke, P.C.
1615 M Street, N.W.
Suite 800
Washington, D.C. 20036

Linda L. Leasure, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, VA 22203

Administrative Law Judge Roy Maurer
Federal. Mine Safety & Health Review Commission
5203 Leesburg Pike, Suite 1000
Falls Church, Virginia 22041