

CCASE:  
MSHA V. MORGAN  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
March 29, 1990

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

v. Docket No. SE 89-50-M

MORGAN CORPORATION

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

ORDER

BY THE COMMISSION:

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982) ("Mine Act" or "Act"), counsels for the Secretary of Labor and Morgan Corporation ("Morgan") have filed with the Commission a Joint Motion to Approve Settlement. For the following reasons, the parties' settlement approval motion is granted and this matter is dismissed.

On February 16, 1990, we granted Morgan's petition for discretionary review of a decision of Commission Administrative Law Judge George A. Koutras, concluding that Morgan had violated 30 C.F.R. § 56.9005 (1988) and assessing a civil penalty of \$1,000.00. 12 FMSHRC 40 (January 1990) (ALJ). On March 28, 1990, the Secretary and Morgan filed the Joint Motion to Approve Settlement.

The parties note that section 56.9005 was superseded on October 24, 1988, by currently applicable 30 C.F.R. § 56.14200. 53 Fed. Reg. 32496, 32514 (August 25, 1988). The parties emphasize that under these circumstances, an adjudicative interpretation of section 56.9005 would have no precedential value in the Secretary's future enforcement efforts

or in regulating Morgan's future conduct. They further state that Morgan has raised substantial questions concerning the proper interpretation of section 56.9005 and whether it violated the standard. The Secretary also seeks settlement because of her desire to use most effectively her limited resources. Accordingly, the Secretary and Morgan request approval of their settlement, including vacation of the citation and assessed penalty, vacation of the Commission's direction for review, and dismissal of the proceeding.

Oversight of proposed settlements of contested cases is an important aspect of the Commission's adjudicative responsibilities under the Mine Act (30 U.S.C. § 820(k)) and is, in general, committed to the Commission's sound discretion. See, e.g., *Pontiki Coal Corp.*, 8 FMSHRC

~395

668, 674-675 (May 1986). The Commission has granted motions to vacate citations and orders and to dismiss review proceedings if "adequate reasons" to do so are present. E.g., Southern Ohio Coal Co., 10 FMSHRC 1669, 1670 (December 1988), and authorities cited ("SOCCO").

We conclude that adequate cause exists to grant the parties' motion. As the prosecutor charged with enforcement of the Act, the Secretary has determined that she should seek dismissal of this proceeding, particularly in view of the replacement of the cited standard by a new and differently worded standard. The operator joins in the motion and has not asserted that it would be prejudiced by dismissal. No other reason appears on this record as to why the motion should not be granted. See, e.g., SOCCO, *supra*, 10 FMSHRC at 1670.

Therefore, upon consideration of the motion, it is granted. Morgan's petition for review is dismissed. The underlying citation and the assessed civil penalty are vacated. Our direction for review is also vacated and this proceeding is dismissed.

~396

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