

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

September 7, 2000

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket Nos. LAKE 96-45-RM
	:	LAKE 96-65-RM
AKZO NOBEL SALT, INC.	:	LAKE 96-66-RM
	:	LAKE 96-80-RM

BEFORE: Jordan, Chairman; Riley, Verheggen, and Beatty, Commissioners

ORDER

BY: THE COMMISSION

In this consolidated civil penalty and contest proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994), the Commission reversed the decision of Administrative Law Judge George Koutras to vacate a citation issued to Akzo Nobel Salt, Inc. (“Akzo”), charging a violation of the two-escapeway requirement of 30 C.F.R. § 57.11050(a). 21 FMSHRC 846 (Aug. 1999). A Commission majority held that the operator, by failing to provide two escapeways at all times when miners were underground, had violated the plain terms of the regulation. *Id.* at 853 (Chairman Jordan and Commissioner Riley), 864 (Commissioner Marks). Commissioners Verheggen and Beatty, dissenting in separate opinions, disagreed that the regulation had the plain meaning ascribed to it by the majority. *Id.* at 865-69 (Commissioner Verheggen), 870-74 (Commissioner Beatty).

In *Akzo Nobel Salt, Inc. v. FMSHRC*, 212 F.3d 1301 (D.C. Cir. 2000), the D.C. Circuit overturned the Commission majority’s decision, holding that the regulation does not unambiguously require that two escapeways be functional at all times when miners are underground. *Id.* at 1303. The Court remanded the case so that the Commission could secure from the Secretary an “authoritative interpretation” of section 57.11050 and apply standard deference principles to that interpretation. *Id.* at 1305.

After issuance of the court’s mandate, the Secretary vacated the underlying citation and on July 26, 2000, filed a motion to dismiss this case as moot. Akzo did not file an opposition to

the motion. In her motion, the Secretary stated that the “authoritative interpretation” the court required of her was contained in Program Policy Letter No. P00-IV-2, which took effect July 31, 2000. Mot. at 2.

In light of the foregoing, the Secretary’s motion is granted and this case is dismissed.

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Mary Lu Jordan, Chairman

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James C. Riley, Commissioner

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Theodore F. Verheggen, Commissioner

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Robert H. Beatty, Jr., Commissioner

Distribution

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