

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE, SUITE 400
DENVER, COLORADO 80204

JUN 30 1981

<hr/>		)	CIVIL PENALTY PROCEEDING
SECRETARY OF LABOR, MINE SAFETY AND	)	)	DOCKET NO. WEST 79-124-M
HEALTH ADMINISTRATION (MSHA),	)	)	MSHA CASE NO. 05-00516-05010
	)	)	DOCKET NO. WEST 79-125-M
Petitioner,	)	)	MSHA CASE NO. 05-00516-05011
	)	)	DOCKET NO. WEST 79-126-M
	)	)	MSHA CASE NO. 05-00516-05012
v.	)	)	DOCKET NO. WEST 79-207-M
	)	)	MSHA CASE- NO. 05-00516-05013
	)	)	DOCKET NO. WEST 79-310-M
	)	)	MSHA CASE NO. 05-00516-05014
ASARCO, INCORPORATED,	)	)	DOCKET NO. WEST 81-12-M
	)	)	MSHA CASE NO. 05-00516-05022
	)	)	DOCKET NO. WEST 81-13-M
Respondent.))	MSHA CASE NO. 05-00516-05023
<hr/>)	MINE: Leadville Mine

Appearance:

James H. Barkley, Esq.
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United States Department of Labor
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For the Petitioner,

Earl K. Madsen, Esq.
BRADLEY, CAMPBELL & CARNEY
1717 Washington Avenue
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For the Respondent

Before: Judge John A. Carlson

DECISION

These cases involve the same parties and similar issues of fact and law. Accordingly, they are consolidated.

The Secretary of Labor has charged Asarco, Inc., with violations of several safety standards promulgated under the Federal Mine Safety and Health Act. 30 U.S.C. § 801 et seq. At a hearing held on May 20, 1981, the parties offered the following disposition of these cases.

WEST 79-124-M

The **Secretary** moved to withdraw citation nos. 333491, 333492 and 328533 and their proposed penalties. **(Tr. 6)**. A written motion was submitted at the hearing. As reason therefor, petitioner stated that there was insufficient evidence to support these citations. **(Tr. 6)**.

Pursuant to 29 C.F.R. 2700.11, the motion is granted. Citation nos. 333491, 333492 and 328533 and the corresponding proposed penalties are vacated.

As to the remaining citations, **Asarco** moved to withdraw its notice of contest. **(Tr. 6)**. Pursuant to 29 C.F.R. 2700.11, the motion is granted. The following citations and their respective penalties are affirmed.

<u>Citation No.</u>	<u>Penalty</u>
328524	\$180.00
328525	195 .00
328526	275.00
328527	195 .00
328530	180.00
333486	160.00
328532	345 .00
328534	379.00
328536	195 .00
333488	160.00
333489	225.00
333490	225.00
333493	180.00
333494	210.00
333495	<u>210.00</u>
	\$3,305 .00

WEST 79-125-M

The Secretary moved to **withdraw citation** nos. 333397, 333390 and their proposed penalties. **(Tr. 8)**. A written motion was also submitted.

As reason therefor, petitioner stated that these citations had no precedential value and the Mine Safety and Health Administration (**MSHA**) inspector who issued them is no longer employed by the Agency. The inspector is the only individual who can testify in support of these citations **(Tr. 8)**. In the written motion the Secretary stated that there was a lack of evidence to support these citations. Pursuant to 29 C.F.R. 2700.11, the motion is granted. Citation nos. 333397 and 333390 and their respective proposed penalty are vacated.

Respondent moved to withdraw its notice of contest to the remaining citations. Pursuant to 29 C.F.R. 2700.11, the motion is granted. **(Tr. 9)**.

The following citations and the corresponding penalties are affirmed.

<u>Citation No.</u>	<u>Penalty</u>
333385	\$ 170.00
333386	170.00
333387	122.00
333388	170.00
333389	170.00
333391	160.00
333392	160.00
333393	130.00
333394	240.00
333395	122 .00
333396	150.00
333399	170.00
333400	90.00
333881	195.00
333883	90.00
333885	90.00
	<u>\$2,399.00</u>

WEST 79-126

Asarco moved to withdraw its notice of contest to all of the citations at issue. (Tr. 10). Pursuant to 29 C.F.R. 2700.11, the motion is granted. The following citations and corresponding penalties are affirmed.

<u>Citation No.</u>	<u>Penalty</u>
333889	\$ 98.90
333890	98.00
334435	150.00
334436	180.00
334438	225.00
334439	305.00
	<u>\$1,056.00</u>

WEST 79-207

The Secretary moved to withdraw citation nos. 333882, 333884, 333887, 330411 and 334437 and their proposed penalties. (Tr. 9, 10). A written motion was also submitted.

As reason therefor, petitioner stated that as to the first three citations, the MSHA inspector who issued them is no longer employed by the Agency. The inspector is the only individual who can testify in support of these citations. (Tr. 9). The Secretary also stated at the hearing and in his motion that there is insufficient evidence to support the five citations. (Tr. 10).

Pursuant to 29 C.F.R. 2700.11, the motion is granted. Cit at ion nos. 333882, 333884, 333887, 330411, 334437 and their respective penalty are vacated.

Asarco moved to withdraw its notice of contest to the remaining citations. (Tr. 11). Pursuant to 29 C.F.R. 2700.11, the motion is granted. The following citations and the corresponding penalties are affirmed.

<u>Citation No.</u>	<u>Penalty</u>
328535	\$ 170.00
328537	130.00
333398	130.00
334440	180.00
330412	225.00
330413	210.00
330414	305 .00
330416	210.00
334402	150.00
334403	210.00
	<u>\$1,920.00</u>

WEST 79-310-M

Asarco moved to withdraw its notice of contest to citation no. 330415 which is the subject of this proceeding, (Tr. 12). Pursuant to 29 C.F.R. 2700.11, the motion is granted. Citation no. 330415 and the penalty of \$180.00 are affirmed.

WEST 81-12-M

The Secretary moved to withdraw Citation nos. 566731, 566407, 566,408, 567031 and 567033 (Tr. 12, 13). A written motion was also submitted.

In support thereof, the Secretary stated as to Citation no. 566731 'that he had' insufficient evidence. (Tr. 12). Concerning Citation nos. 566407, 566408 and 567031, the Secretary stated that Asarco had a program of regular inspections of the posts involved which may have revealed that some were loose, the condition cited by the inspector. Therefore, the circumstances may not have constituted a violation of the standard. (Tr. 13).

As to Citation no. 567033, petitioner stated that the blasting wire in question was properly supported, and therefore, no violation occurred. Respondent stated that proper shunting and equipment were used and there was no improper handling of the blasting box (Tr. 13). The Secretary agreed to these facts; (Tr. 15).

Pursuant to 29 C.F.R. 2700.11, the Secretary's motion is granted. The above citations and their respective penalties are vacated.

Asarco moved to withdraw its notice of contest to the remaining Citations. (Tr. 14). Pursuant to 29 C.F.R. 2700.11, the motion is granted. The following Citations and their respective penalties are affirmed.

<u>Citation No.</u>	<u>Penalty</u>
566404	\$ 84.00
566405	60.00
566406	255 .00
567026	34.00
567027	48 .00
567028	78.00
567029	78.00
567030	240.00
567032	140.00
567034	180.00
566409	98.00
566410	84.00
567035	90.00
567036	60.00
567037	90 .00
	<u>44.00</u>
	\$1,663.00

WEST 81-13-M

The Secretary moved to withdraw Citation no. 566732 and the proposed penalty. (Tr. 15). A written motion was also submitted. In support thereof the Secretary stated that there was insufficient evidence to support the Citation. (Tr. 15).

Pursuant to 29 C.F.R. 2700.11, the motion is granted. Citation no. 566732 and the proposed penalty are **vacated**.

As to the remaining citations, Asarco moved to withdraw its notice of contest. (Tr. 16). Pursuant to 29 C.F.R. 2700.11, the motion is granted. The following citations and corresponding penalties are affirmed.

<u>Citation No.</u>	<u>Penalty</u>
567038	\$114.00
567040	<u>90.00</u>
	\$204.00

The Secretary stated that as to all citations he proposed to withdraw, in the above cases except those withdrawn because of the unavailability of the inspector, the petitioner and respondent reviewed all the evidence and the Secretary discussed the matters thoroughly with MSHA before submitting its motion. (Tr. 15, 16).

Respondent shall pay the penalty amount assessed for each docket number within 30 days of the date of this order.

SO ORDERED.



John A. Carlson
Administrative Law Judge

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