

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

3 JUL 1980

OLD BEN COAL COMPANY, : Application for Review  
Applicant :  
 : Docket No. VINC 75-313  
v. :  
 : Mine No. 21  
SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), :  
(formerly mining enforcement :  
and safety administration), :  
Respondent :

DECISION

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

This proceeding was one of four similar proceedings in which the parties waived their rights to an evidentiary hearing and submitted the cases for decision on the basis of the pleadings. The Application was limited by applicant's "partial withdrawal of issues" filed May 20, 1976, to its contention that "the underlying notice of violation and order of withdrawal issued pursuant to section 104(c)(1) of the Act were unlawfully issued and thus provide no basis for the issuance of the subject order of withdrawal \* \* \*."

Because the underlying notice and withdrawal orders were challenged in a proceeding then pending before the Board of Mine Operations Appeals (which came before the Commission under section 301 of the Federal Mine Safety and Health Amendments Act), the case was continued by order of July 25, 1977.

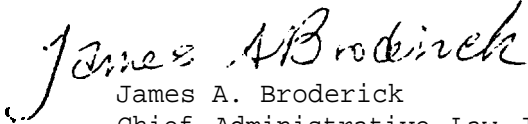
COMMISSION DECISION

On June 2, 1980, the Commission issued its decision which upheld my decision of July 16, 1975, and affirmed the challenged withdrawal orders, including Order of Withdrawal No. 1 MK issued October 21, 1974, which is the order "underlying" the withdrawal order under review herein.

Based upon the Commission decision, I conclude that the underlying notice and **order** were validly issued. Therefore, the order reviewed herein, being Order No. 1 LDC, December 27, 1974, was validly issued, and must be affirmed.

ORDER

It is ordered that Order of Withdrawal No. 1 LDC, December 27, 1974, is AFFIRMED, and the application for review is DISMISSED.

  
James A. Broderick  
Chief Administrative Law Judge

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