

FEDERAL **MINE SAFETY** AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

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FALLS CHURCH, VIRGINIA 22041

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5 SEP 1980

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

v.

THE PITTSBURG & MIDWAY COAL
MINING COMPANY,
Respondent

: Civil Penalty Proceedings
:
: Docket No. BARB 79-307-P
: A.O. No. 15-11348-03002
:
: Docket No. **BARB** 79-285-P
: A.O. No. 15-11348-03001
:
: Docket No. PIKE 79-129-P
: A.O. No. 11348-03004 **F**
:
: Docket No. KENT 79-74
: A.O. No. 15-11348-03006
:
: Docket No. KENT 79-180
: A.O. No. 15-13348-03007
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: Docket No. KENT 79-367
: A.O. No. 15-13348-03009
:
: Docket No. KENT 79-269
: A.O. No. 15-11348-03008
:
: Docket No. KENT 79-99
: A.O. No. 15-11348-03003
:
: Pleasant Hill Surface Mine
:
: Docket No. KENT 79-229
: A.O. No. 15-02021-03005
:
: Colonial Strip Mine

DECISIONS

In its Decision of August 4, 1980, the Commission remanded the captioned "independent contractor" cases to me for the limited purpose of affording the Secretary an opportunity to consider several enforcement options available to him as a result of my decisions of February 8, 1980,

affirming his decision to proceed against the respondent mine **owner-** operator rather than against a number of independent contractors. As I interpret the Commission's remand, the Secretary had thirty (30) days to make up his mind, and to inform me as to any enforcement decision in this regard. On September 4, 1980, the Secretary filed a response to the Commission's decision on-remand and a copy is attached and incorporated herein by reference.

In view of the fact that the **Secretary indicated** to the Commission during the appeal of these cases that he now desires to achieve "fair **enforcement**" of the Act in independent contractor cases, and in view of Commissioner Jestrab's observations in his dissent concerning the Secretary's concession that the respondent is not the operator, it seems to me that it is incumbent on the Secretary to decide how he now wishes to proceed in these cases, and that is precisely how I **interpret** the Commission's remand. However, rather than doing this, the Secretary is **now** attempting to shift the burden to the respondent and to the contractors to take the initiative for the substitution or parties, and in the alternative he suggests that the case be reopened to permit the respondent to **implead** the contractor as a third party. The Secretary's apparent refusal to comply with the Commission's decision that he take the enforcement initiative in these cases is apparently based **on some** mysterious policy question which is characterized by the Secretary at pg. 2 of his remand statement as something not in his interest.

It seems obvious to me that the Secretary has not complied with the Commission's decision on remand. Accordingly, in order to give the Secretary a **fresh** opportunity to apply his new enforcement policy, and in keeping with his avowed intent to insure that "fair enforcement of the Act" will be followed in contractor cases, IT IS **ORDERED** that all of these dockets be DISMISSED, without prejudice **to** the Secretary instituting new proceedings against any and all parties who he believes should be pursued.


George A. Koutras
Administrative Law Judge

Attachment

Distribution:

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