

CCASE:
MATHIES COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

MATHIES COAL COMPANY,
CONTESTANT

Contest of Order

v.

Docket No. PENN 80-319-R
Order No. 841925 7/22/80

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

Mathies Mine

DECISION AND ORDER

Pursuant to Rule 11, 29 C.F.R. 2700.11, the operator moves to dismiss voluntarily its contest of an unwarrantable failure closure order based on an inspector's finding of a serious violation of 30 C.F.R. 75.200. The operator has concluded that after a careful consideration of the merits of the order it is apparently not subject to challenge.

After dismissal, the validity of the order and its subsidiary findings of violation and unwarrantability will no longer be subject to challenge. Wolf Creek Collieries, PIKE 78-70-P (March 26, 1979); Pontiki Coal Co., 1 FMSHRC 1476 (October 25, 1979). For this reason, I conclude the dismissal will establish an estoppel as to those issues in any subsequent penalty proceeding. F.R.C.P. 41(a)(2); Climax Molybdenum Company, 2 FMSHRC _____ (October 7, 1980); Energy Fuels Corp., 1 FMSHRC 299 (May 1, 1979); Rule 22, 29 C.F.R. 2700.22.

Accordingly, it is ORDERED that the captioned matter be and hereby is, DISMISSED WITH PREJUDICE.

Joseph B. Kennedy
Administrative Law Judge