

CCASE:

SOL (MSHA) V. SOUTHWESTERN ILLINOIS COAL

DDATE:

19801030

TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. LAKE 80-341  
A/O No. 11-00609-03020

v.

Captain Strip Mine

SOUTHWESTERN ILLINOIS COAL CORP.,  
RESPONDENT

ORDER OF DISMISSAL

On October 6, 1980, Petitioner filed a motion to dismiss in the above-captioned case stating as follows:

The Petitioner, RAY MARSHALL, Secretary of Labor, United States Department of Labor, by the undersigned attorney, hereby makes a motion, pursuant to 29 CFR 2700.10, that this proceeding against Respondent, SOUTHWESTERN ILLINOIS COAL CORPORATION be dismissed. As grounds for this motion, the Petitioner states:

1. Citation No. 1000674 was issued on February 26, 1980 as a result of an act committed by a subcontractor, Darryll Waggle Construction Company, working at the Captain Strip Mine;

2. An assessment of \$1,050 was proposed which was based, in part, on the negligence of Waggle Construction Company;

3. 30 CFR 45.6, effective July 31, 1980, establishes guidelines as to when the Secretary will cite independent contractors;

4. In the interests of fair law enforcement, the Secretary should be given the opportunity to apply this policy to the independent contractor, Waggle Construction Company;

5. A dismissal of this proceeding will permit the Secretary to determine whether a citation should be issued to Waggle Construction Company and, if issued, will permit Waggle Construction Company to file a Notice of Contest pursuant to 29 CFR 2700.20 if it chooses to do so.

~3188

Petitioner's motion is herewith GRANTED and the above-captioned case is herewith DISMISSED.

John F. Cook  
Administrative Law Judge