

CCASE:
SOL (MSHA) v. QUARTO MINING
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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 80-311
A/O No. 33-02024-03093

v.

Powhatan No. 7 Mine

QUARTO MINING COMPANY,
RESPONDENT

DECISION

This case consists of a petition for the assessment of a civil penalty for one alleged violation of the Act. The operator has filed a motion to dismiss the proceeding and the Solicitor has filed a memorandum in opposition to the respondent's motion. For the reasons which follow respondent's motion is hereby GRANTED.

Citation 1008730 was issued for an alleged violation of 30 CFR 75.316. On September 8, 1980 a hearing was held in Secretary of Labor v. Nacco Mining Company, Quarto Mining Company and The North American Coal Corporation, LAKE 80-251, et al. in which the same provision of respondent's dust control plan at issue in this citation was litigated. In those cases a decision dated September 22, 1980 held invalid this provision of the dust control plan. The decision in LAKE 80-251 is dispositive of this citation.

ORDER

Citation 1008730 is hereby VACATED and the petition to assess a civil penalty is hereby DISMISSED.

Paul Merlin
Assistant Chief Administrative Law Judge