

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 22, 1983

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 83-32
Petitioner : A.C. No. 46-01436-03509
v. :
 : Shoemaker Mine
CONSOLIDATION COAL COMPANY, :
Respondent :

ORDER TO SOLICITOR TO SUBMIT INFORMATION

The Solicitor has filed a motion to withdraw his Petition for the Assessment of Civil Penalty in this case.

The subject citation was issued on May 7, 1982, for a violation of 30 C.F.R. § 75.200 because center bolting was not completed within 24 hours as required by the approved roof control plan. According to the Solicitor the inspector determined that center bolts had not been installed at the cited location for a period of 34 hours.

However, the Solicitor further states that "The condition had been abated even before issuance of the citation."

The Solicitor then states that the operator has paid the penalty assessment of \$20.

If as the Solicitor states, the condition was corrected before the citation was issued then no violation existed at the critical time. Republic Steel Corp., 5 FMSHRC 1158 (June 1983). Under such circumstances the citation should not have been issued and no penalty should have been assessed. It is inconsistent for the Solicitor to seek to withdraw his penalty petition and at the same time allow the operator to pay a \$20 penalty.

Accordingly, the Solicitor should review this matter and determine whether or not a violation actually existed at the time the citation was issued and if it did not, then to free the operator of liability.

In light of the foregoing, it is Ordered that the Solicitor advise me with respect to the foregoing within 30 days of the date of this order.



Paul Merlin
Chief Administrative Law Judge

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