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SOL (MSHA) V. KITT ENERGY
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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 PROCEEDINGS

Docket No. WEVA 82-363
A.C. No. 46-04168-03503

v.

Docket No. WEVA 83-64
A.C. No. 46-04168-03528

KITT ENERGY CORPORATION,
RESPONDENT

Kitt No. 1 Mine

DECISION

Before: Judge Kennedy

The parties move for approval of a motion withdrawing the captioned penalty petitions on the ground that a review of the videotapes of the condition cited shows the violation charged did not, in fact, occur.

In what came to be known as the case of the "slippery slopes," MSHA charged two violations 75.1704 on the ground that the hand rails on a slope that served as an escapeway were not maintained so as to insure safe passage of the miners at all times. Because the violations were considered "nit-picks," MSHA proposed its usual "wrist-slap" penalty of \$20. When the matters, together with others, came on for a prehearing conference, the trial judge suggested that before the parties put the taxpayers and stockholders to further inordinate expense over what both parties conceded were trivial violations they attempt to resolve the matter by making videotapes of miners using the slopes in question to determine the difficulty, if any, involved in climbing through the areas.

The parties agreed to this and after accomplishing the "view" agreed the citations were improvidently issued and should be vacated. This having been accomplished the instant motion followed. I conclude the violations charged did not, in fact, occur and that the citations were, therefore, properly vacated.

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Accordingly, it is ORDERED that the motions to withdraw be, and hereby are, GRANTED and the captioned matters DISMISSED.

Joseph B. Kennedy
Administrative Law Judge