

CCASE:
SOL (MSHA) V. U.S. STEEL 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. PENN 86-203
A.C. No. 36-05018-03613

v.

Cumberland Mine

UNITED STATES STEEL MINING
COMPANY,
RESPONDENT

ORDER OF DISMISSAL

Before: Judge Weisberger

Petitioner's Motion to Withdraw civil penalty was filed with the Commission on November 3, 1986. To date respondent has not responded to this motion.

Petitioner in its motion, has alleged, in essence, that the circumstances of the two citations in this case are indistinguishable from prior adverse decisions to petitioner. The citations in this case, cite, in essence, allegations that battery lids were not secured on batteries on a scoop.

It appears that the issue here was decided adverse to petitioner in prior proceedings involving the same parties, Secretary v. U.S. Steel, 6 FMSHRC 1617 (1984) (ALJ); Secretary v. U.S. Steel, 6 FMSHRC 1510 (1984) (ALJ); Secretary v. U.S. Steel 6 FMSHRC 155 (1984) (ALJ).

Accordingly, as the above decisions are Res Judicata (See Secretary v. U.S. Steel 5 FMSHRC 1334 (1983)), the Motion to Withdraw Civil Penalty is GRANTED. Citations Numbers 2683479 and 2683654 are VACATED, and this case is DISMISSED.

Avram Weisberger
Administrative Law Judge
(703) 756-6210