

CCASE:
SOL (MSHA) V. MONITEAU COUNTY COMMISSION
DDATE:
19890420
TTEXT:

~657

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. CENT 88-148-M
A.C. No. 23-01971-05502

v.

Maintenance Shop

MONITEAU COUNTY COMMISSION,
RESPONDENT

DECISION

Appearances: John J. Matthew, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
John T. Kay, Esq., Prosecuting Attorney, Moniteau
County, California, Missouri,
for Respondent.

Before: Judge Lasher

This proceeding was initiated by the filing of a proposal for penalty by Petitioner MSHA pursuant to Section 110 of the Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C. Section 801 et seq. (1977)(herein the Act). Petitioner sought assessment of a penalty of \$20.00 for an alleged violation of 30 C.F.R. Section 50.30 described in Citation No. 3064674 issued on March 31, 1988 by MSHA Inspector Dulces N. Mesa as follows:

"The operator has failed to file with the appropriate MSHA office a quarterly mine employment report (Form 7000-2), after having been advised not to by their legal representative."

30 C.F.R. 50.30(a) provides:

(a) Each operator of a mine in which an individual worked during any day of a calendar quarter shall complete a MSHA Form 7000-2 in accordance with the instructions and criteria in 50.30-1 and submit the original to the MSHA Health and Safety Analysis Center, P.O. Box 25367, Denver Federal Center, Denver, Colo. 80225, within 15 days after the end of each calendar quarter. These forms may be obtained from MSHA Metal and Nonmetallic Mine Health and Safety Subdistrict Offices and from MSHA Coal

Mine Health and Safety Subdistrict Offices. Each operator shall retain an operator's copy at the mine office nearest the mine for 5 years after the submission date.

The matter came on for hearing on February 16, 1989 in Sedalia, Missouri. Thereafter, by motion to dismiss dated April 14, 1989, the Secretary indicated its determination that Respondent Moniteau County Commission was operating a "borrow pit" rather than a mine covered under the Mine Act, that borrow pits are covered by OSHA except in certain circumstances not present here, that the Citation in question should be vacated, and these proceedings dismissed.

The motion to dismiss is for all intents and purposes a withdrawal by MSHA of its prosecution of this matter. Pursuant to Commission Rule 11 (29 C.F.R. 2700.11) a party may withdraw a pleading at any stage of a proceeding with the approval of the Commission or the Judge. In view thereof, and good cause appearing for the withdrawal of MSHA's proposal herein, the motion to dismiss is GRANTED, Citation No. 3064674 is VACATED, and this proceeding is DISMISSED.

Michael A. Lasher, Jr.
Administrative Law Judge