

CCASE:  
SOL (MSHA) V. CONSOLIDATION COAL  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 94-57
Petitioner	:	A. C. No. 46-01968-04121
	:	
v.	:	Blacksville No. 2 Mine
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

ORDER DENYING MOTION TO CONSOLIDATE  
ORDER DENYING MOTION TO EXPEDITE PROCEEDINGS  
ORDER DENYING MOTION TO VACATE  
ORDER CONTINUING STAY

On February 22, 1994, this case was stayed on a motion by the operator pending the completion of MSHA's special investigation under Section 110(c) of the Act.

On June 13, 1994, operator's counsel filed a motion to consolidate, motion to expedite and motion to vacate the stay. Counsel advises that on or about May 23, 1994, three Consolidation Coal employees were informed by MSHA that as a result of the 110(c) investigation, MSHA proposed to specially assess civil penalties against them as individuals. Apparently, there has been a health and safety conference, but according to counsel the conference officer did not have the authority to terminate the 110(c) proceedings. Counsel seeks to consolidate this case with any proceedings against the employees.

As grounds for her motions, counsel asserts that the employees contest the underlying 104(d)(2) order. She argues that in light of potential personal liability resulting from a 110(c) proceeding, an expedited hearing is necessary. She states that the employees desire a prompt hearing without waiting for the penalty assessment and that Consolidation concurs with the request of the employees. And she tells me that Commission judges are mandated to exercise their informed discretion when considering all motions for expedition.

The motions are misplaced and premature. Counsel wishes to consolidate this matter with 110(c) proceedings that have not yet been initiated before the Commission. Indeed, she does not advise whether the individuals involved have filed a request for a hearing with the Secretary and she offers no proof that they have designated her as their representative. No indication is given how this case can be consolidated with one that thus far has not been filed. Without such a filing there is no way to judge the propriety of the relief counsel seeks.

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An administrative agency cannot exceed the jurisdictional authority granted to it by Congress. As has been held by the Commission, the Act grants subject matter jurisdiction to the Commission by creating specific causes of actions which the Secretary of Labor, operators, and individuals may institute. Kaiser Coal Company, 10 FMSHRC 1165, 1169 (September 1988). The steps that must be followed to commence an action before the Commission are spelled out in the Commission's procedural rules. 29 C.F.R. 2700.25 et seq. These rules cannot be ignored.

It may be that this case which is against the operator under Section 110(a) should be heard at the same time as a 110(c) matter, but that determination must await the filing of the latter suit and the designation by the individuals involved of whom they wish to have as their legal representative.

Accordingly, it is ORDERED that the motion to consolidate be DENIED.

It is further ORDERED that the motion to expedite be DENIED.

It is further ORDERED that the motion to vacate the stay in this case be DENIED, and that the stay in this case be CONTINUED until further notice.

Paul Merlin  
Chief Administrative Law Judge

Distribution: (Certified Mail)

Robert S. Wilson, Esq., Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203

Elizabeth Chamberlin, Esq., Consolidation Coal Company, 1800 Washington Road, Pittsburgh, PA 15241-1421

Robert M. Vukas, Esq., Consolidation Coal Company, 1800 Washington Road, Pittsburgh, PA 15241-1421

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