



The Court of Appeals for the D.C. Circuit held that the Secretary's decision to cite the owner-operator of a mine and/or its independent contractor, is an exercise of her prosecutorial discretion that is unreviewable. *Sec'y of Labor v. Twentymile Coal Co.*, 456 F.3d 151 (D.C. Cir. 2006). Consequently, the Secretary may cite Carmeuse for alleged safety violations of its independent contractor Excel. Accordingly, **IT IS ORDERED** that the Secretary's motion to withdraw its motion to dismiss **IS GRANTED**.

Jerold Feldman  
Administrative Law Judge

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