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SOL (MSHA) V. CONSOLIDATION COAL
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SECRETARY OF LABOR : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. WEVA 92-1250-A
Petitioner : A. C. No. 46-01968-04040
:
v. : Blacksville No. 2 Mine
CONSOLIDATION COAL COMPANY, :
Respondent :

ORDER LIFTING STAY
ORDER OF DISMISSAL

Before: Judge Merlin

On March 24, 1993, the above captioned case was placed on stay pending a decision on the single sample dust issue by the Commission in Keystone Coal Company, Docket Nos. PENN 91-1480-R, etc. On January 4, 1994, the Commission decided Keystone adversely to the Secretary. 16 FMSHRC 6. The Secretary did not appeal, but instead on February 18, 1994, instituted a notice of proposed action in the Federal Register. 59 Fed. Reg. 8356. It is further noted that by memorandum dated March 8, 1994, the Administrator for Coal Mine Safety and Health instructed District Managers to vacate single sample dust citations.

I further take account of the fact that in connection with Docket No. Penn 91-1480-R the Solicitor in that case sent Administrative Law Judge Weisberger a list of citation numbers which allegedly present the single sample dust issue. This list is not adequate or helpful because it does not identify the citations by Commission docket numbers. Because of the Solicitor's failure to furnish the required information, it has been necessary to search every judge's docket case by case to locate the ones that involve single samples. It is a strange turn of events when the court must find for counsel the cases on which he needs to take action.

Finally, there are many cases on the Solicitor's list which have not been located in the search of the judges' dockets. The Solicitor should revisit his list to straighten out these matters.

It is clear in light of the foregoing data including the memorandum of the Coal Administrator, that this case should be dismissed. This case and others like it are cluttering the dockets of the Commission's judges. No useful purpose would be served by requiring the Solicitor to file a motion to dismiss here.

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Accordingly, it is hereby ORDERED that the Order of Stay previously entered herein be LIFTED and that this case be and is hereby DISMISSED.

Paul Merlin
Chief Administrative Law Judge

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