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SOL (MSHA) V. EASTERN ASSOCIATED COAL
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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. MORG 78-314-P
A. C. No. 46-01429-02020I

v.

Federal No. 1 Mine

EASTERN ASSOCIATED COAL CORP.,
RESPONDENT

DECISION

Appearances: Edward H. Fitch, Esq., Office of the Solicitor, U.S.
Department of Labor, for Petitioner;
R. Henry Moore, Esq., Rose, Schmidt, Dixon, Hasley,
Whyte, and Hardesty, Pittsburgh, PA, for Respondent.

Before: Judge Lasher

This proceeding arose under section 109 of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq. (1970). Pursuant to section 301(c)(3) of the Federal Mine Safety and Health Act of 1977, proceedings pending at the time such act takes effect shall be continued before the Federal Mine Safety and Health Review Commission.

A hearing on the merits was held in Morgantown, West Virginia, on March 20, 1979. After considering evidence submitted by both parties, and argument, I entered a detailed oral opinion on the record at the close of the hearing. It was found that the violation charged did occur. I also found that the violation was serious, that it resulted from gross negligence on the part of Respondent, that Respondent is a large mine operator with an average history of violations, and had abated the violation in good faith. It was further determined that a penalty otherwise warranted by consideration of the other penalty assessment criteria provided by statute would have no adverse affect on Respondent's ability to continue in business. Respondent was assessed a penalty of \$5,000.00 for the violation charged in Notice No. 1 MES dated September 2, 1976.

Respondent is ordered to pay MSHA the penalty assessed of \$5,000.00 within 30 days from the date of this decision.

Michael A. Lasher, Jr. Judge