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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