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SOL (MSHA) V. THACKER COAL CO.
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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. PIKE 78-348-P Assessment Control No. 15-02940-02004
v.	
THACKER COAL COMPANY, RESPONDENT	No. 1 Mine

DEFAULT DECISION

Appearances: Edward H. Fitch IV, Esq., Office of the Solicitor,
Department of Labor, for Petitioner
No one appeared at the hearing on behalf of Respondent

Before : Administrative Law Judge Steffey

When the hearing in the above-entitled proceeding was convened in Pikeville, Kentucky, on July 26, 1979, pursuant to a written notice of hearing dated June 14, 1979, and served on respondent's representative on July 17, 1979, by a Federal coal-mine inspector, counsel for the Mine Safety and Health Administration entered his appearance, but no one appeared at the hearing to represent respondent. The Commission's Interim Procedural Rules which were then in effect provided (29 CFR 2700.26(c)):

(c) Where the respondent fails to appear at a hearing, the Judge shall have the authority to conclude that the respondent has waived its right to a hearing and contest of the proposed penalties and may find the respondent in default. Where the Judge determines to hold respondent in default, the Judge shall enter a summary order imposing the proposed penalties as final, and directing that such penalties be paid.

Counsel for petitioner moved at the hearing that respondent be held in default pursuant to Section 2700.26(c) and that the penalties proposed by the Assessment Office be imposed. Counsel for petitioner also stated that he had just finished discussing the Assessment Office's proposed penalties with the inspectors who wrote the notices of violation here involved and that the inspectors had advised him that the proposed penalties were in line with the company's size and the other five criteria which are required to be used in the assessment of penalties.

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MSHA v. Thacker, Docket No. PIKE 78-348-P (Contd.)

Petitioner's motion is granted and I find respondent to be in default. I further find that respondent has waived its right to a hearing and that the penalties proposed by the Assessment Office should be imposed as hereinafter ordered.

WHEREFORE, it is ordered:

Thacker Coal Company, shall, within 30 days from the date of this decision, pay civil penalties totaling \$230.00 which are allocated to the respective violations as follows:

Notice No. 2 ALG (5/18) 12/11/75	75.1710-1	\$ 70.00
Notice No. 1 ALG (6-1) 1/12/76	75.1710-1	74.00
Notice No. 3 RDM (7-10) 7/13/77	75.1725	86.00
Total Penalties Assessed in This Proceeding		\$230.00

Richard C. Steffey
Administrative Law Judge