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SOL (MSHA) V. OSBORNE 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. BARB 78-618-P A/O No. 15-02269-80  No. 1 Mine
v.	
OSBORNE COAL COMPANY, RESPONDENT	

DEFAULT DECISION

Appearances: John H. O'Donnell, Esq., Office of the Solicitor, U.S.  
Department of Labor, for Petitioner  
Randall K. Osborne, Osborne Coal Company,  
Pennington Gap, Virginia, for Respondent

Before: Judge Cook

On August 14, 1978, the Mine Safety and Health Administration (MSHA) filed a petition for assessment of civil penalty against Osborne Coal Company (Respondent) pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977. Since an answer had not been filed by the Respondent as of November 16, 1978, then Acting Chief Administrative Law Judge Broderick issued an order requiring the Respondent to show cause both as to why it should not be deemed to have waived its right to an evidentiary hearing and as to why the case should not be disposed of summarily pursuant to 29 CFR 2700.26(b) (1978). On December 1, 1979, the Respondent timely filed its response to the order to show cause. Subsequent thereto, the case was assigned to the undersigned Administrative Law Judge.

Notices of hearing were issued on March 8, 1979, May 9, 1979, and May 30, 1979. Copies of the notices were sent by certified mail to the Respondent. The return mail receipts disclose that they were received by the Respondent on March 19, 1979, May 16, 1979, and June 6, 1979, respectively. A hearing was held, following which, a transcript with exhibits was received by the Office of Administrative Law Judges of the Federal Mine Safety and Health Review Commission on September 13, 1979.

The hearing commenced at 9:45 a.m., June 27, 1979, at the designated place, i. e., Abingdon, Virginia. Counsel for MSHA appeared. No one appeared to represent the Respondent (Tr. 4).

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Following this determination, the Respondent was found in default pursuant to 29 CFR 2700.26(c) (1978) (Tr. 5). It was thereupon noted that 29 CFR 2700.26(c) (1978), provides that "[w]here the Judge determines to hold the Respondent in default, the Judge shall enter a summary order imposing the proposed penalties as final, and directing that such penalties be paid" (Tr. 5).

Counsel for MSHA then introduced the following exhibits into evidence:

M-1 is a copy of a computer printout compiled by the Office of Assessments listing the history of previous violations for which the Respondent had paid assessments beginning October 15, 1971, and ending October 15, 1973.

M-2 is a copy of Notice No. 1 LR, 30 CFR 75.200, October 15, 1973.

M-3 is an extension of M-2.

M-4 is a termination of M-2.

M-5 is a copy of Notice No. 2 LR, 30 CFR 75.1704, October 15, 1973.

M-6 is a termination of M-5.

M-7 is a copy of Notice No. 3 LR, 30 CFR 75.503, October 15, 1973.

M-8 is a termination of M-7.

M-9 is a document containing the Office of Assessment's narrative findings of fact and proposed penalties with respect to the subject notices.

Exhibit M-9 identifies the notices and the proposed penalties as follows:

Notice No.	Proposed Penalty
1 LR	\$56
2 LR	84
3 LR	35

Following the receipt into evidence of MSHA's exhibits, a summary order was entered imposing the proposed penalties and directing that the penalties be paid (Tr. 11).

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ORDER

Accordingly, the order is REAFFIRMED and the Respondent is directed to pay the penalty assessed in the amount of \$175 within 30 days of the date of this decision.

John F. Cook  
Administrative Law Judge