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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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| SECRETARY OF LABOR,<br>MINE SAFETY AND HEALTH<br>ADMINISTRATION (MSHA), | PETITIONER | Civil Penalty Proceeding<br><br>Docket No. LAKE 79-53<br>Assessment Control<br>No. 11-00614-03007 |
| v. | | |
| SOUTHWESTERN ILLINOIS COAL<br>CORPORATION, | RESPONDENT | Streamline Strip Mine |

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner
Brent L. Motchan, Esq., St. Louis, Missouri, for Respondent

Before: Administrative Law Judge Steffey

Pursuant to written notice dated September 4, 1979, a hearing in the above-entitled proceeding was held on October 10, 1979, in St. Louis, Missouri, under section 105(d) of the Federal Mine Safety and Health Act of 1977.

MSHA's Petition for Assessment of Civil Penalty was filed in Docket No. LAKE 79-53 on May 14, 1979, seeking assessment of a civil penalty for an alleged violation of 30 CFR 77.1710(a).

Issues

Simultaneous posthearing briefs were filed on December 13, 1979, by counsel for MSHA and Southwestern Illinois Coal Corporation. The briefs raise the issues of (1) whether a violation of section 77.1710(a) occurred and, if so, what civil penalty should be assessed based on the six criteria set forth in section 110(i) of the Act and (2) whether Southwestern Illinois Coal Corporation should be required to pay a civil penalty for an alleged violation which was committed by an independent contractor.

Findings of Fact

My decision in this proceeding will be based on the findings of fact set forth below:

1. Southwestern Illinois Coal Corporation operates the Streamline Strip Mine which is located in Randolph County, Illinois. The mine employs 176 miners to produce about 5,600 tons of coal per day from the Illinois No. 6 coal seam which is 72 inches thick (Exh. 1, p. 3). Southwestern is controlled by Arch Mineral Corporation whose total annual coal production for the year 1978 was 7,783,693 tons. Ashland Oil Incorporated owns a 48.9-percent interest in Arch Mineral Corporation (Exh. 1, pp. 1 & 2).

2. Southwestern Illinois Coal Corporation, hereinafter referred to as the operator, entered into a contract dated June 22, 1977, with Darryll Waggle Construction, Inc., hereinafter referred to as Waggle. Under the contract, Waggle agreed to assemble and erect a Model No. 8200 Marion Dragline at the operator's Streamline Mine in accordance with blueprints and other specifications to be provided by the operator. The operator reserved the right to make changes in the drawings and specifications. Waggle was obligated to provide all labor and supervision and all tools except that the operator agreed to provide all welding machines, torches, grinders, air motors, and derrick or crawler cranes (Operator's Br., Exh. 1, pp. 1-3).

3. Waggle was obligated under the contract to provide a competent foreman or superintendent, satisfactory to the operator, at the site of the work at all times and Waggle was obligated under the contract to enforce strict discipline and good order among its employees (Op. Br., Exh. 1, p. 3). The contract provided that Waggle should complete the assembly and erection of the dragline within a period of 14 months after sufficient material had been received at the erection site for work to begin. The operator agreed to provide (1) a graded and drained erection site at the streamline Mine, (2) an all-weather access road to the erection site, and (3) a railroad spur and unloading area for unloading dragline components, other equipment, and supplies (Op. Br., Exh. 1, pp. 4 & 5). Waggle was obligated under the contract to perform all work on a "cost-plus" basis and the operator reserved the right to inspect, audit, and make photocopies of all of Waggle's records (Op. Br., Exh. 1, p. 7). Under the contract, Waggle could not subcontract any work without obtaining the operator's express permission in writing (Op. Br., Exh. 1, p. 9). Waggle was obligated under the contract to reimburse the operator for any claims, damages, or lawsuits arising from the assembly of the dragline, including any claims or expenses arising under the Federal Coal Mine Health and Safety Act of 1969, as amended (Op. Br., Exh. 1, p. 10). Waggle was obligated under the contract to take all necessary precautions for the safety of employees and to comply with all applicable provisions of Federal, State, and local safety laws and building codes to prevent accidents or injuries to persons on or about or adjacent to the premises where the work was being performed (Op. Br., Exh. 1, p. 12).

4. An MSHA inspector on January 9, 1979, went to the operator's Streamline Mine and advised the operator's safety director, Mr. Allan Byrd, that he would be making an inspection

at the site where Waggle was assembling the Marion dragline (Tr. 9). The inspector then went to the construction site office where he examined Waggle's preshift and accident reports. The inspector was accompanied on his examination of the construction site by

Waggle's safety representative, Mr. Sam Higgerson, and the UMWA's safety representative (Tr. 10).

5. When the inspector was about 40 feet northwest of the dragline, he observed two of Waggle's employees at a point about midway of the boom. When the inspector first saw the workmen, they were about 220 feet from him. It appeared to the inspector that one of the employees was cutting metal with an oxygen-acetylene torch while the other watched or assisted in the cutting operation. The inspector started walking toward the men to determine whether they were wearing safety goggles. The man who was doing the actual cutting was wearing goggles, but the man who was watching the cutting operation was not wearing goggles. When the inspector was between 100 and 10 feet from the men, he calculated that the face of the man without goggles was within 2-1/2 feet of the cutting torch. The workmen did not realize that the inspector was in their vicinity until he was about 10 feet from them. At that time, they stopped working and turned to face the inspector (Tr. 12; 29; 55; 63; 86; Exhs. B and C).

6. The inspector learned from Waggle's construction site representative that the name of the workman who was observing the cutting process was Mr. Doug Hepp. The inspector advised Mr. Higgerson, Waggle's safety representative, that Mr. Hepp was in violation of section 77.1710(a) which provides "[p]rotective clothing or equipment and face-shields or goggles shall be worn when welding, cutting, or working with molten metal or when other hazards to the eyes exist." The inspector wrote Citation No. 771428 at 11:30 a.m., citing the operator for a violation of section 77.1710(a) because (Tr. 12; Exh. 2):

> Doug Hepp, a classified welder, was observed assisting another welder in cutting out pieces of metal from a section of 1-1/2" plate. Mr. Hepp's eyes were within 2-1/2 feet from the cutting tip and he was not wearing any eye protection. The violation occurred in the boom area of the 8200 Dragline on the construction site. Mr. Hepp was under the supervision of Ralph Gaither.

7. Although Mr. Hepp testified that he keeps goggles in his tool box and wears them when he is cutting with a torch, it was necessary for Mr. Hepp to go to the welding shanty and procure a pair of goggles after he was cited by the inspector for not wearing them (Tr. 80-81). Both Mr. Horton, who was doing the cutting when Citation No. 771428 was written, and Mr. Hepp testified that Mr. Hepp was standing behind Mr. Horton while metal was being cut (Tr. 68; 76). Waggle provided the goggles used by its workers and Waggle always had plenty of goggles at the construction site (Tr. 81-82).

8. A master mechanic employed by the operator presented a diagram of a Model 8200 Marion dragline and testified that, in his opinion, it would have been difficult for the inspector to have determined from a distance of approximately 220 feet that Mr. Hepp's face was within 2-1/2 feet of

the tip of the cutting torch (Tr. 63). The master mechanic also testified that there were two buildings in the general area where the inspector was standing at the time he claims to have seen Messrs. Horton and Hepp working. The master mechanic expressed the opinion that the two buildings might also have obstructed the inspector's view of the place where Messrs. Horton and Hepp were working (Tr. 63). The master mechanic, however, was not present when the inspector made the investigation which resulted in the issuance of Citation No. 771428 (Tr. 66). Messrs. Horton and Hepp also expressed a belief that the inspector would not have been able to tell how close Mr. Hepp was to the cutting torch when the inspector was 220 feet from the cutting operation (Tr. 69; 77).

9. The inspector gave Waggle a period of 5 minutes within which to abate the violation of section 77.1710(a) and the violation was abated within the time allowed. Therefore, the inspector was of the opinion that the operator had shown a good faith effort to achieve rapid compliance (Tr. 19; Exh. 2).

10. The danger associated with Mr. Hepp's failure to wear goggles lies in the fact that a piece of molten metal could have flown up from the cutting torch and could have caused a serious eye injury (Tr. 15). The inspector believed that the operator had tried to the best of its ability to get all employees to wear protective eyewear (Tr. 17-18).

11. The inspector stated that it was MSHA's policy to cite the operator for violations attributable to work performed for an operator by an independent contractor. At the time the inspector wrote Citation No. 771428, he was solely concerned with bringing about compliance with section 77.1710(a) rather than with a question of whether he should have written the citation in the name of Waggle, instead of the operator of the Streamline Mine (Tr. 42-43). The inspector was aware of the fact that the Secretary has published some proposed regulations governing the issuance of citations or orders in the name of independent contractors and he recognized that MSHA's policy of citing the operator for violations committed by independent contractors might have to be revised after the regulations have been finalized (Tr. 49).

The Issue of Whether the Operator or Waggle Should Have Been Cited

In its brief (pp. 6-7), the operator correctly notes that all of the persons working at the construction site were employees of Waggle except for a construction superintendent who was employed by the operator to make sure that Waggle was conforming with the operator's blueprints and specifications for assembly of the dragline. The operator argues that Waggle was in the best position to control health and safety matters and that there is no justification to allow MSHA to carry out its policy of administrative convenience in citing operators rather than independent contractors who are in actuality responsible for violations.

MSHA's brief (pp. 9-10) appropriately cites the inspector's statement that he had issued the citation in the name of the operator because it was

MSHA's policy to cite operators for violations committed by an independent contractor's employees pending such time as the Secretary finalizes his proposed regulations governing the procedures to be used for citing independent contractors (Finding No. 11, supra).

The Commission has so far upheld MSHA in citing operators for violations committed by independent contractors (Secretary of Labor v. Republic Steel Corporation, 1 FMSHRC 5; Secretary of Labor v. Kaiser Steel Corporation, 1 FMSHRC 343; Secretary of Labor v. Consolidation Coal Company, 1 FMSHRC 347; Secretary of Labor v. Old Ben Coal Company, 1 FMSHRC 1480; and Secretary of Labor v. Monterey Coal Company, 1 FMSHRC 1781). In the Old Ben case the Commission noted, however, that MSHA's policy of citing operators for independent contractors' violations should be an interim policy and that if MSHA unduly prolongs that interim policy, intead of implementing direct enforcement procedures against the independent contractors, MSHA "* * * will be disregarding the intent of Congress" (1 FMSHRC at 1486).

The Commission's decision in the Old Ben case, supra, was not issued until 20 days after the hearing in this proceeding was completed. In the Old Ben case, the Commission held that citing an operator for contractor violations solely as a mere administrative expedient would be an abuse. The inspector was specifically asked on cross-examination if he had cited the operator for the contractor's violation as an administrative convenience. The inspector denied that he had cited the operator for mere convenience and stated that he had cited the operator in this instance because that was MSHA's policy (Tr. 42-43). Subsequently, the inspector stated that he was aware that regulations pertaining to citing independent contractors had been proposed and that he was aware that MSHA's policy of citing the operator would probably have to be changed after those regulations have been finalized (Finding No. 11, supra). In such circumstances, I find that the inspector's citing of the operator for Waggle's violation was permissible in this case and that MSHA's Petition for Assessment of Civil Penalty filed in this proceeding should be upheld as a proper way to proceed under the 1977 Act at the time Citation No. 771428 was issued.

The Issue of Whether MSHA Proved that a Violation Occurred

The operator's brief (pp. 3-6) contends that the inspector's testimony was not sufficiently probative to establish that a violation of section 77.1710(a) actually occurred. The operator bases its contention that no violation was proven on two primary arguments. First, the operator claims that the inspector was unable to give sufficient details about the actions of Mr. Hepp to establish that Mr. Hepp was assisting another welder in cutting pieces of metal, as was alleged in Citation No. 771428.

It is true that the inspector did not know precisely what Mr. Hepp was doing. The inspector said that Mr. Hepp (1) could have been merely observing the other welder cut the metal, (2) could have been picking up fallen pieces with a pair of tongs, or

(3) could have been marking metal.  The inspector

candidly conceded that although Mr. Hepp might have been doing any of the aforementioned acts, he could not recall the exact nature of Mr. Hepp's assistance. The inspector said that all he was really claiming was that Mr. Hepp was so close to the cutting torch that he should have been wearing goggles (Tr. 45).

Mr. Hepp corroborated the inspector's statement by testifying that both he and Mr. Horton had been told to cut pieces of metal from a large section of plate. Mr. Hepp stated that he had assisted Mr. Horton in marking the pieces before they were cut. Mr. Hepp further said that although both he and Mr. Horton normally would cut and weld each day, he did not recall that he had personally done any cutting on January 9, 1979, prior to the time that the citation was issued (Tr. 80; 83).

Mr. Horton also corroborated the inspector's testimony by stating that Mr. Hepp was helping him mark the pieces of metal for cutting (Tr. 68). Therefore, I find that the preponderance of the evidence supports the inspector's statement in Citation No. 771428 to the effect that Mr. Hepp was "* * * assisting another welder in cutting out pieces of metal" (Finding Nos. 6 and 7, supra).

The second argument made in the operator's brief (p. 4) is that the inspector could not have determined that Mr. Hepp's eyes were only 2-1/2 feet from the torch while the inspector was 220 feet away, particularly when consideration is given to the fact that two buildings were situated some place between the inspector and the site where the cutting was being done.

A distance of 220 feet is less than the length of a football field. Yet it is easy for a spectator with normal vision at a football game to tell when a player at the most remote part of the field is lying on the ground or running or catching a pass. I find that the inspector made a credible statement when he said he could determine from a distance of about 220 feet that Mr. Hepp was kneeling beside the man who was using the cutting torch. Moreover, it should be recalled that the inspector stated that he first observed the workmen when he was about 220 feet from them. He then said that while he was walking toward the men, he made his determination that Mr. Hepp's eyes were about 2-1/2 feet from the cutting torch. It is unreasonable for the operator to argue that the inspector should be able to specify the exact distance he was from Mr. Hepp when he made his determination that Mr. Hepp's eyes were about 2-1/2 feet from the cutting torch. The inspector said that Messrs. Hepp and Horton did not realize that he was approaching them until he was about 10 feet from them. It is certain that the inspector would have been able to determine at some point before he was within 10 feet of the men that Mr. Hepp's eyes were within 2-1/2 feet of the cutting torch. The inspector's last statement on the subject was that he did not think that he made his determination that Mr. Hepp's eyes were within 2-1/2 feet of the torch at a distance of 220 feet, but he is certain that he was able to make that determination by the time he reached the 10-foot distance when the men stopped cutting and turned to face the inspector (Tr. 87-88).

The most that the operator's witnesses said about the inspector's ability to determine the 2-1/2-foot distance was that it would have been hard for the inspector to determine at a distance of approximately 220 feet that Mr. Hepp's eyes were within 2-1/2 feet of the cutting torch (Finding No. 8, supra). None of the operator's witnesses were asked to give an opinion as to whether the inspector could have made that determination when he was somewhere between 100 and 10 feet from the men. I find that the preponderance of the evidence supports a finding that the inspector made a credible statement when he said that he was able to determine that Mr. Hepp's eyes were within 2-1/2 feet of the cutting torch.

The operator's brief (pp. 5-6) also contends that its witnesses' testimony to the effect that Mr. Hepp always stood behind Mr. Horton when Mr. Horton was cutting is more credible than the inspector's testimony to the effect that Mr. Hepp was kneeling down and was within 2-1/2 feet of the torch while Mr. Horton was cutting. The operator's brief cites Mr. Horton's statement that Mr. Hepp stood to the rear of Mr. Horton while Mr. Horton was cutting. Mr. Horton also claimed that while he was cutting, Mr. Hepp was not engaged in marking the metal (Tr. 68; 71; 74). The operator's brief also cites Mr. Hepp's testimony to the effect that he always stood up and turned around when Mr. Horton started cutting with the torch. Mr. Hepp also testified that he was about 5 feet 7 inches tall and that his face was about 6 or 7 feet from the cutting torch when Mr. Horton was cutting (Tr. 76; 84).

The operator's brief (p. 6) additionally argues that the inspector's inability to be certain as to details is fatal to MSHA's case. In order for the inspector's lack of certainty as to what Mr. Hepp was doing to be fatal to MSHA's case in this proceeding, the lack of certainty would have to bear directly on the nature of the violation charged. The inspector was certain as to the vital point necessary for his testimony to support his allegation that a violation of section 77.1710(a) occurred, namely, the inspector said that he was certain that Mr. Hepp's eyes were close enough to the cutting torch to make it essential for him to wear goggles in order to protect his eyes from possible injury (Tr. 45). Moreover, as I have previously indicated above, the inspector's inability to know what Mr. Hepp had been doing before he came within the inspector's scrutiny did not prevent the inspector from correctly concluding that Mr. Hepp had unnecessarily exposed himself to the hazard of a possible eye injury by kneeling down close to the cutting torch.

As to the operator's credibility arguments, I find, for at least two reasons, that the inspector's testimony was more credible than that of Mr. Hepp. First, it should be recalled that Mr. Hepp testified that when Mr. Horton began cutting with the torch, he stood up and turned around (Tr. 76). At no time did Mr. Hepp ever deny that the inspector was within 10 feet of him before he realized that the inspector was in his vicinity. If Mr. Hepp had actually stood up and turned around while Mr. Horton was cutting with the torch, Mr. Hepp would have been in a

position to see the

inspector approaching and would have been able to assert when the inspector cited him for failing to wear goggles that he was not even looking in the direction of the cutting torch, must less close enough to be injured by flying bits of molten metal.

The second reason for downgrading the credibility of Mr. Hepp's testimony is that Mr. Hepp testified that it was his practice to cut and weld every day that he was at the construction site. He stated that when he did cut or weld that he always wore goggles or an eye-shield. He further said that he kept his goggles in his toolbox. Despite Mr. Hepp's assertion that he kept his goggles in his toolbox, it was necessary for Mr. Hepp to go to the welding shanty in order to obtain goggles when he was cited by the inspector for failure to wear goggles (Tr. 80-81). If Mr. Hepp had been accustomed to wearing goggles when he was cutting, it is very unlikely that he would have had to go all the way to the welding shanty to procure goggles when his supervisor asked him to get them.

Finally, the operator's brief claims that MSHA could have produced other witnesses to substantiate the inspector's claim as to the 2-1/2-foot distance and to fill in other details lacking in the inspector's testimony. The choice of witnesses was a defect which was more apparent in the operator's presentation than it was in MSHA's. The inspector stated that Waggle's safety representative, Mr. Sam Higgerson, was with him at the time he observed Mr. Hepp violating section 77.1710(a) (Finding No. 4, supra). Yet the operator tried to cast doubt on the inspector's ability to see the cutting operation from a distance of 220 feet by bringing in a witness who was not even with the inspector at the time the violation was observed. Clearly, the only person who could have placed a real cloud of doubt over the inspector's testimony would have been another person who was standing at the same place the inspector was standing when the inspector first observed the cutting operation. The operator's failure to present Mr. Higgerson as a witness is a strong indication that Mr. Higgerson was also able to see Messrs. Horton and Hepp at a distance of 220 feet. Moreover, Mr. Higgerson would have been able to draw a diagram showing the exact location of the two buildings which were allegedly close to the west end of the dragline and Mr. Higgerson would have been able to state with certainty whether the inspector was standing in a place where the buildings would have blocked his view of the boom area where the cutting operation was in progress.

Based on my credibility determinations and the foregoing discussion, I find that the preponderance of the evidence shows that a violation of section 77.1710(a) occurred. It is now necessary to consider the six criteria set forth in section 110(i) of the Act to determine what civil penalty is appropriate.

Size of the Operator's Business

On the basis of the facts set forth in Finding No. 1, supra, I find that Southwestern Illinois Coal Corporation is a large operator and that

any penalty assessed in this proceeding should be in an upper range of magnitude insofar as it is based on the criterion of the size of the operator's business.

Effect of Penalties on Operator's Ability To Continue in Business

Counsel for the operator did not present any evidence at the hearing with respect to the operator's financial condition. In Buffalo Mining Co., 2 IBMA 226 (1973), and in Associated Drilling, Inc., 3 IBMA 164 (1974), the former Board of Mine Operations Appeals held that when a respondent fails to present any evidence concerning its financial condition, a judge may presume that payment of penalties would not cause respondent to discontinue in business. In the absence of any specific evidence to the contrary, I find that payment of penalties will not cause the operator to discontinue in business.

History of Previous Violations

Counsel for the operator and MSHA introduced at the hearing as Exhibit No. 1 some data which the Assessment Office used in this proceeding to arrive at a determination that the operator's history of previous violations would result in assignment of 8 points for the purpose of determining penalties in accordance with the procedures set forth in 30 CFR 100.3. The Commission held in Secretary of Labor v. Shamrock Coal Co., 79-6-5, 1 FMSHRC 469, that a judge is not bound by the procedures used by the Assessment Office in determining penalties and that de novo assessments are within the authority of the Commission and its judges. When I am considering motions for approval of settlements, there is reason for me to review the Assessment Office's findings as to the number of points which have been assigned under the six criteria. In a contested case, however, I would prefer that counsel for MSHA introduce a listing of respondent's actual previous violations, if any, so that I can make findings regarding the criterion of history of previous violations without having to examine the findings of the Assessment Office.

Normally, I increase penalties when there is evidence before me to show that a given operator has previously violated the same section of the regulations which is charged in MSHA's Petition for Assessment of Civil Penalty in the case under consideration. In this case, the parties stipulated that the operator has not previously violated section 77.1710(a). Therefore, I find that respondent has no history of previous violations which has to be considered when a penalty is assessed for the violation of section 77.1710(a) which is before me in this proceeding.

Good Faith Effort To Achieve Rapid Compliance

Citation No. 771428 gave Mr. Hepp a period of 5 minutes within which to procure goggles. Mr. Hepp was able to obtain goggles within the time given and the inspector terminated the citation 5 minutes after it had been issued. It was the

inspector's opinion that a good faith effort to achieve rapid compliance had been shown (Tr. 19). Therefore, I find that a good faith

effort to achieve rapid compliance was made and the operator will be given full credit for that mitigating factor in the assessment of a penalty.

Negligence

Counsel for MSHA introduced as Exhibit No. 3 a form on which the inspector had indicated his views with respect to the criteria of negligence and gravity. On Exhibit No. 3, the inspector checked a box which states that "[t]he condition or practice cited could not have been known or predicted; or occurred due to circumstances beyond the operator's control." At the hearing, the inspector testified that the operator had tried to the best of its ability, short of discharging employees, to get the workers to wear protective eyewear (Tr. 18).

I find on the basis of the evidence in this proceeding that the violation of section 77.1710(a) was accompanied by a low degree of negligence.

Gravity

On the basis of Finding No. 10, supra, I find that the violation was moderately serious. The piece of metal which was being cut with the torch was supported by two crib blocks so that the molten metal would drop to the ground (Tr. 73). In such circumstances, there was not a very strong likelihood that Mr. Hepp would have received a severe injury because of his failure to wear goggles.

Assessment of Penalty

The inspector made the following recommendation with respect to the assessment of a penalty (Exh. 3, p. 2):

> On this particular site, management has repeatedly attempted to enforce safe working habits. Some employees, however, attempt to circumvent the using of protective equipment. Although management is ultimately responsible for violations, I feel that in this case leniency should be exercised when assessing the penalty. It is impossible for management to accompany and supervise each employee every minute of the day.

Exhibit 1 indicates that the Assessment Office proposed a penalty of $84.00 for the violation of section 77.1710(a) here involved. MSHA's brief (p. 11) requests that a penalty of not less than $84.00 be assessed. As indicated above, I am not bound by the Assessment Office's recommended penalties, but my findings must be based on the evidence presented by the parties. The inspector testified that the operator was not negligent and the inspector made a special plea for leniency in the assessment of the penalty. The facts show that the violation was only moderately serious. In such circumstances, I find that the penalty of $84.00 proposed by the Assessment Office is fair and

reasonable in light of the evidence presented by the parties in this proceeding.

Findings and Conclusions

(1) Under the facts in this proceeding and current Commission precedents, MSHA's Petition for Assessment of Civil Penalty should be sustained in citing respondent for the independent contractor's violation of section 77.1710(a).

(2) Southwestern Illinois Coal Corporation should be assessed a penalty of $84.00 for the violation of section 77.1710(a) alleged in Citation No. 771428 dated January 9, 1979.

(3) As the operator of the Streamline Mine and controller of the erection site involved in this proceeding, Southwestern Illinois Coal Corporation is subject to the Act and to all regulations promulgated thereunder.

WHEREFORE, it is ordered:

Within 30 days from the date of this decision, Southwestern Illinois Coal Corporation shall pay a penalty of $84.00 for the violation of section 77.1710(a) alleged in Citation No. 771428 dated January 9, 1979.

Richard C. Steffey
Administrative Law Judge
(Phone: 703-756-6225)