

The criteria, in most cases, are applicable individually to each of the alleged violations and, in most instances, the judge makes a finding as to whether the violations occurred and then, on the basis of those findings, he assesses penalties which are appropriate based on all six criteria.

In this instance, the respondent has not appeared at the hearing 2/ but, because of the inspector's knowledge of the respondent's financial condition, I have decided to dispose of this case on the basis of the evidence received at the hearing, rather than to follow the procedures and regulations for disposition of cases based on the fact that a default judgment might be appropriate, after a show-cause order has been issued.

Exhibits 1 through 9 show that seven violations have been found by the inspectors in respondent's Nos. C-11 and C-12 mines. The various violations need not be discussed in detail in view of the primary consideration to one criterion which I expect to give in assessing penalties. The exhibits on their face show that violations occurred and, therefore, we have not taken detailed evidence from the inspectors in order to save their time and to avoid the expense of a long hearing and a large number of pages of transcript.

Exhibits 4 and 5 in this proceeding show that the operator has seven alleged violations for which penalties have previously been paid. Only one of those violations was for any of the same sections of the regulations which are involved in this proceeding.

because of the very insignificant history of previous violations and because this proceeding is being disposed of primarily on the basis of the criterion of the operator's inability to pay penalties, it is unnecessary to give further consideration to the criterion of history of previous violations.

I find that all seven violations alleged by the Petitions for Assessment of Civil Penalty occurred. All of them were either serious or moderately serious. Most of them were the result of ordinary negligence, although with respect to one of them, the inspector was of the opinion that a heavy rainstorm had caused some bad roof conditions to occur within a period of approximately 1 day, so that in that instance, there was a low degree of negligence. According to the inspectors' testimony, all of the violations were abated rapidly and the operator was cooperative. The inspectors believed that he showed good faith in trying to abate all of the alleged violations.

2/ See footnote 1 above.

In some instances, the criterion of whether the penalties would cause an operator to discontinue business is given primary consideration. It appears to me on the basis of the testimony, in this case, that this proceeding is one in which that should be the primary basis for disposing of the Petition.

Before I get to the primary question of the operator's financial condition, I should emphasize that the operator was producing a very small amount of coal because both of the mines combined, in this case, produced from 50 to 75 tons per day and the operator was subcontracting the sale of the coal to the same company from whom the mine was leased. The result was that the operator was unable to sell his coal for true market value and could not make a profit even on the small production that was available. The operator's answers to the show-cause orders issued in each of these cases state that the operator is out of business and that his assets had to be sold to pay his debts and that even after that was done, he still is several thousand dollars in debt. The operator states that he sees no way that he would be able to pay the proposed penalties in this case.

In Docket No. PIKE 79-58-P, the Assessment Office proposed total penalties of \$1,260.00 for four alleged violations, all of which were alleged in one order. In Docket No. PIKE 79-59-P, the Assessment Office proposed total penalties of \$272.00 for three alleged violations. The inspector's testimony in this case indicates that respondent is no longer in business as he stated in his answers. The equipment that the operator was using in his mine was purchased and the operator was making payments on that equipment. When his economic condition forced him to discontinue in business, the equipment was sold to discharge his obligations.

Additionally, the inspector has indicated that the operator's home was sold to help pay his debts. At the present time, the operator is working for a bank as a collector and is not in the mining business either as an operator of a mine or as a miner working for another company.

Since the evidence shows that the operator is out of business and cannot pay the penalty, I find that this proceeding should be disposed of on the basis that the operator is unable to pay penalties. Therefore, a penalty of \$1.00 will be assessed for each of the seven violations. If the cases had been the subject of a full evidentiary presentation, based on the detailed consideration of the criteria of gravity and negligence, I feel confident that the proposed assessments indicated in the file would be appropriate, but

since penalties would have no deterrent effect for an operator who is no longer in the coal business and who does not contemplate reentry into the coal business, I think that no purpose of the Act would be served by further increasing the debts which the operator already owes and which would probably be uncollectible even if they were to be imposed.

Summary of Assessments and Conclusions

(1) On the basis of the evidence in this proceeding, the following assessments are made:

Docket No. PIKE 79-58-P

Order No. 1 TJ (7-8), 9-28-77, \$ 75.200	\$ 1.00
Order No. 1 TJ (7-8), 9-28-77, \$ 75.400	1.00
Order No. 1 TJ (7-8), 9-28-77, \$ 75.603	1.00
Order No. 1 TJ (7-8), 9-28-77, \$ 75.200	<u>1.00</u>
Total Penalties in Docket No. PIKE 79-58-P	\$ 4.00

Docket No. PIKE 79-59-P

Notice No. 1 WNS (8-1), 3-8-78, \$ 75.200	\$ 1.00
Citation No. 673217, 4-3-78, \$ 75.1713	1.00
Citation No. 673227, 4-3-78, \$ 77.1605(k).....	<u>1.00</u>
Total Penalties in Docket No. PIKE.79759-P	\$ 3.00
Total Penalties in This Proceeding	\$ 7.00

(2) Respondent, as the operator of the Nos. C-11 and C-12 Mines, is subject to the provisions of the Act and to the regulations promulgated thereunder.

WHEREFORE, it is ordered:

Respondent, within 30 days from the date of this decision, shall pay civil penalties totaling \$7.00 for the violations described in paragraph (1) above.

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

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