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SOL (MSHA) V. HARMAN MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceeding Docket No. VA 81-61 Assessment Control No. 44-01519-03025 V
v.	
HARMAN MINING COMPANY, RESPONDENT	No. 3 Mine

DECISION

Appearances: Covette Rooney, Attorney, Office of the Solicitor, U.S. Department of Labor, for Petitioner; Robert M. Richardson, Esq., Richardson, Kemper, Hancock & Davis, Bluefield, West Virginia, for Respondent.

Before: Administrative Law Judge Steffey

Pursuant to a notice of hearing issued August 10, 1981, a hearing in the above-entitled proceeding was held on September 16, 1981, in Richlands, Virginia, under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(d).

After the parties had completed their presentations of evidence, I rendered the bench decision which is reproduced below (Tr. 106-127):

> This proceeding involves a petition for assessment of civil penalty filed in Docket No. VA 81-61 on June 23, 1981, by the Secretary of Labor, seeking to have a civil penalty assessed for a violation of 30 C.F.R. 75.316 by Harman Mining Company.
>
> The issues in civil penalty cases are whether a violation occurred and, if so, what civil penalty should be assessed based on the six criteria which are set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977.
>
> In order to determine whether a violation has occurred, I must first make some findings of fact, which will be set forth in enumerated paragraphs.
>
> 1. On January 26, 1981, Inspector Larry Clevinger made an examination of the No. 3 Mine of Harman Mining Company, Incorporated. At that time he wrote Citation No. 939522 under section 104(d)(1) of the Act citing a violation of section 75.316, and stating that the ventilation system, methane and dust control plan was not being complied with and that the line brattice was

not being maintained from the last open crosscut to within 10 feet of the face of the Nos. 1, 2, 3, and 4 entries; and that the check curtains were not installed in the Nos. 1, 2, 3, and 4 entries.

2. The inspector introduced as Exhibit 4A a diagram which showed the distances which various entries had been driven without there having been erected line brattices. Those distances range from 115 feet maximum to 80 feet minimum in the Nos. 2 and 1 entries, respectively. There were also some crosscuts to the left of the Nos. 4, 3, and 2 entries, which were 20, 45, and 30 feet in depth, respectively. The inspector introduced as Exhibit 4B a diagram of that same area and those same distances, on which he had drawn the brattice curtains which should have been erected, if the ventilation plan had been followed.

3. The inspector stated specifically that the portion of the ventilation plan which was not complied with was paragraph 12 on page four of the plan, which is Exhibit 3 in this proceeding. The first sentence in that paragraph states: "Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut in each working place of the working section." The inspector stated that was the provision that he specifically had in mind when he alleged the violation in Citation No. 939522.

4. The inspector defended his citing or issuing the citation under section 104(d)(1) of the Act by pointing out that prior to the time the Commission's decision was issued in MSHA v. Cement Division, National Gypsum Company, 3 FMSHRC 822 (1981), he used criteria under which he wrote unwarrantable failure orders and citations, based on a decision issued by the former Board of Mine Operations Appeals after the Board had been reversed by a circuit court. After reversal, the Board held that the term, "significant and substantial," which has to be found as to a given violation before a citation can be issued under section 104(d), needs to involve no more than a remote or speculative possibility that an injury might occur. The inspector indicated that a violation did not have to be very serious at all in order to be considered a "significant and substantial" violation under the criteria he was then following.

In the Commission's decision in the National Gypsum case that I just cited, the Commission stated that it believed that the previous criteria for finding a violation to be significant and substantial had been so broadly defined that the words had lost their basic meaning. The Commission stated on page 828 of its decision that "* * * [o]ur interpretation of the significant and substantial language as applying to violations where there exists a reasonable likelihood of an injury or illness of a reasonably serious nature occurring, falls between these two extremes -- mere existence of a violation, and existence of imminent danger, the latter of which contains elements of both likelihood and gravity."

5. The inspector in this case at first said that the holding of the Commission in National Gypsum Company caused him to have some doubt as to whether his citation would have been issued, if he had been following the Commission's new criteria for establishing whether a violation is significant and substantial, but after considerable reflection on the

matter, he concluded that he believed that failure to have the curtains continuously maintained in the four entries was sufficient to be a reasonable likelihood of injury or illness and that if it occurred, it would have been of a reasonably serious nature. Consequently, he reaffirmed his belief that his unwarrantable failure citation should have been issued. He also explained that he had made the other findings required, namely, that a violation had occurred, that it was not an imminent danger, that it was significant and substantial, and finally that an unwarrantable failure had occurred.

6. The respondent in this proceeding has presented three witnesses who have testified that the reason that the company was having difficulty with keeping line curtains in the entries described in the inspector's citation was that they had been mining in a coal seam with heights of 9 to 10 feet, including a rock seam in the middle. They then encountered a rock seam that was so thick they couldn't mine it with the coal and did not want to cut it down. Consequently, they went under the rock portion which had the effect of reducing the mine height from a 9 or 10-foot height down to 50 or 54 inches. Also, in order to improve the stability of the roof, the company narrowed the entries from about 20 feet to 14 to 18 feet. This particular block of coal was approximately 120 feet long, and it only took the company about 5 days to mine completely through it, at which time they resumed mining at the normal height and returned to the normal 20-foot width for entries.

7. The witnesses for respondent stated that during the period when their entries were narrow, the inspector had inspected the mine and had issued his citation about 2 days after they had started into the above-described low area with the narrow width in the entries and that their equipment measured 10 feet 6 inches in width, and it was almost impossible to keep a brattice curtain up at the same time the equipment was operating in the entries. That accounted for the fact that the curtains had not been hung on January 26 when they were cited by the inspector.

8. There were some stipulations entered into by the parties. It was stipulated that the No. 3 Mine is owned and operated by Harman Mining Company and that Harman Mining Company is subject to the Act; that I have jurisdiction to hold this hearing and decide the case; that the citation was duly issued by an authorized representative of the Secretary; that the assessment of a civil penalty would not cause respondent to discontinue in business; and that insofar as the size of the company is concerned, the annual production for the total company is 265,134 tons and for the No. 3 Mine, production is 103,716 tons annually.

It was also stipulated that the company showed a

good-faith effort to achieve compliance after the citation was issued, and that the No. 3 Mine had 54 previous violations during the 24 months preceding the issuance of the citation involved in this case. There was some additional testimony by one of respondent's witnesses, Mr. Hurley, to the effect that there were a large number of inspection days at the mine and that if you took that into consideration, the company had a very low ratio of violations to inspection days.

9. Mr. Hurley also introduced as Exhibit B a sheet printed by MSHA's computer. That exhibit reflects that during January of 1981 the company was within compliance with the respirable dust standard by having an average concentration of 1.8 milligrams per cubic meter of air.

10. It was stated by Mr. Owens, one of respondent's witnesses, that he was in this mine on Thursday, January 22, 1981, when the company first began to mine the narrow entries and go to the lower height than was normal. This particular Exhibit B shows that on that day a respirable dust sample for the cutting machine operator's environment showed a concentration of 1.4 milligrams per cubic meter.

The first issue to be considered is whether a violation occurred. We don't have any real problem with making a finding as to whether the violation occurred, because everybody concedes that the curtains weren't up on January 26 when the inspector wrote this citation at 8:15 a.m. Everybody concedes that the ventilation plan required them to be maintained continuously; therefore, I find that a violation of section 75.316 occurred. While in a normal civil penalty case, an issue or issues concerning the validity of the inspector's citation or order is not normally a matter to be considered, I held in this case that it was permissible for respondent to go into the matters of whether the citation had been validly issued under Section 104(d)(1) because I interpreted the Commission's National Gypsum decision as indicating that a respondent may raise matters concerning the validity of citations and orders in a civil penalty proceeding under the 1977 Act.

It is true, as Ms. Rooney has pointed out in her argument, that the Commission agreed with the former Board that when a civil penalty case arising under the 1969 Act had been set for hearing and was in progress, that it was not permissible for respondent to raise issues as to the validity of the citation or order, because the only issues in a civil penalty proceeding are whether a violation occurred and, if so, what penalty should be assessed. The reason that the former Board held that you could not go into the merits of the issuance of a citation or order in a civil penalty case was that the 1969 Act very clearly provided for review of citations, which were then called notices of violation, and orders as a separate matter; whereas, in the 1977 Act, the provision for review of the merits of a citation or order are not really very clearly set forth in the Act because it appears that under the language in section 105(d) of the Act, a respondent might take the position as to civil penalty issues that he would not seek review by means of a notice of contest and would, instead, await the occurrence of a

proceeding under the civil penalty aspect of the Act, at which time he would raise issues both as to the merits of the citation or order being considered in the civil penalty case, as well as the issue of whether a violation occurred and what penalty should be assessed.

Consequently, I believe that the Commission has opened the door to allow an operator to raise issues as to the validity of a citation or order in a civil penalty case. I believe that is the result of the Commission's consideration in the National Gypsum Company of the criteria

for making "significant and substantial" findings because that case was not a notice of contest case, but arose as an ordinary civil penalty case. (FOOTNOTE 1)

Now that I have so ruled it is necessary for me to consider whether the inspector properly issued an unwarrantable failure citation in this instance. We don't have any problem with the first part of the inspector's finding as to a 104(d)(1) citation because we have already agreed that a violation occurred. Nobody has felt that the violation approached anything like an imminent danger, so we don't have any problem with finding that the violation did not constitute imminent danger. We do have a problem when we go to the language of section 104(d)(1) which provides that an inspector must also find "* * * that such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard."

As I already pointed out in my findings above, the Commission held in the National Gypsum case that the words "significantly and substantially" should be applied so as to determine whether there was a reasonable likelihood of an injury or illness which would have been of a reasonably serious nature.

The respondent in this case has argued very strenuously that the mere fact that these brattice curtains were not up at the beginning of the working shift on Monday, January 26, cannot possibly be found to be significant and substantial within the meaning of the Commission's test, because, according to the inspector, there was only a roof-bolting machine in the actual working section or in any of these entries where the brattice curtains had not been erected, but there were other pieces of energized equipment outby such entries. Respondent contends that since there was almost no likelihood of any ignition occurring and since the mine generated only from .01 to .02 of 1 per cent of methane, even when analyzed in a bottle sample, that the likelihood of any explosive quantity of methane occurring was so remote that it would be a misuse of the Commission's test to say that leaving these brattice curtains down at a time like that -- that is, when there was no activity in the entries and no production going on -- would contribute to a mine safety or health hazard.

The Government, of course, has argued that even though at the moment the inspector issued Citation No. 939522, there was only a minute quantity of methane in the mine; that when you have a mine which has the possibility or the potential of liberating methane, that there is also the possibility that an explosive quantity of methane could accumulate in the

inadequately ventilated entries. Consequently, if any kind of spark should have come from any of this equipment while these curtains were not up, that an explosion could have occurred. Of course, if it should have occurred, it could have had serious consequences.

As to that part of the argument, I think that I shall have to go along with the Government's contentions. In Reliable Coal Corp. v. Morton, 478 F.2d 257 (4th Cir. 1973), the court held that Congress has done away with the gaseous and nongaseous distinction in coal mines. That case shows that we must assume under both the '77 and '69 Acts that all coal mines are to be considered gaseous.

Despite the court's holding in the Reliable case, we still look at the actual amount of methane which exists in any given situation and if we find that there is no presence of methane, or if a mine above the water table is involved and has never liberated methane, we still in a case citing a violation of a ventilation provision, we hold that that is a less serious violation than one which occurs in a mine which does liberate large quantities of methane. But be that as it may, the liberation of methane is unpredictable. Methane has been known to be found and accidents have occurred in mines which have no prior history of liberating methane. Consequently, I think I shall have to go along with the Government and find that the possibility exists that a large accumulation of methane could occur, and the fact that an explosion can occur in these situations, requires me to find that the inspector was correct when he said that there was a reasonable likelihood of an injury from the fact that these curtains were not up and that a reasonably serious injury could have occurred as a result of that explosion, if it had occurred.

Now, we have also an argument here by respondent's counsel in which he says that the citation was not valid because the inspector failed to make the final findings required by section 104(d), which is that there was unwarrantable failure of the operator to comply with the standard cited. As Ms. Rooney has pointed out and as the inspector said in reply to one of my questions, it is a fact that when an operator is given a citation or an order, there is a provision on the face of the citation or order which states that the operator should see the reverse side of the citation or order of withdrawal. If that is done, it will be found that the reverse side explains the provisions of section 104(a), section 104(d)(1), section 104(f), and other provisions. That is why the two words "see reverse" are placed on the front of the citation, so that an operator will be notified, when section 104(d) is entered on the front of the citation or order, if the operator looks on the back, he will find what that section involves. In this case, the explanation on the back of the citation indicates that an unwarrantable failure has been found to exist in order for the citation to be issued under section 104(d)(1) of the Act.

I wrote a decision in Pontiki Coal Corp., 2 FMSHRC 370 (1980), in which the primary issue was whether the fact that the citation or order stated on its face "see reverse" was sufficient notice to the operator that the findings required for issuing an unwarrantable failure citation had been made by the inspector. I held in that case that the fact that unwarrantable failure was explained on the back of the form was sufficient for the purpose

of making the necessary findings. The Pontiki case was not appealed to the Commission, so I find in this case, consistent with

my holdings in that case, that the inspector did make the required findings as to unwarrantable failure and that his Citation No. 939522 should be affirmed.

Now, as to the other contentions by the operator in this case, it was stated that he didn't really have the opportunity to make suggestions when the ventilation plan was renewed each 6 months and that he pretty much is required to agree with whatever sort of new provisions MSHA may put in his new plan when it is sent to him for his signature. I am in sympathy with the operator on those things, both the roof control plan and the ventilation plan, in that I think an operator does pretty much find himself trying to get his views into the plan when they are pretty much dictated to him by MSHA.

But in this instance, I think that the Act itself provides a pretty specific indication that MSHA may amend these ventilation plans to provide for the continuous maintenance of the line brattice, whether work is being performed or not. Because of injuries and fatalities that have occurred on account of methane accumulation, MSHA personnel feel they must become increasingly strict in these plans. In doing so, however, they are not going beyond the original provisions of the safety standards because section 303(c)(1) of the 1969 Act provided the language which is now section 75.302 of the Regulations. That section provides that:

> Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement, where such exception will not pose a hazard to the miners.

So, I believe that MSHA was well within the original provisions of the Act when it amended the plan as originally issued to require that those line brattices be continuously maintained.

I believe that I have covered most of the arguments that have been made by the parties and the only thing that remains to be done is to consider the six criteria before assessing a penalty. The stipulations show that two of the criteria have already been stipulated to, namely, that the size of respondent's business is small, and that the operator did abate this citation of a violation within the time provided for by the inspector. In fact, the inspector gave the operator until 9:30 to abate the violation, and he wrote a termination by 9:15, which would have been only one hour after he issued it. For the men to have put up curtains in four entries in an hour's time, when you consider how much distance was involved, indicates that respondent abated the violation in a rapid manner and should have some consideration for the promptness of its action in so doing. It

has also been stipulated as to another of the criteria that payment of a penalty would not cause respondent to discontinue in business.

As to the history of previous violations, it was stated that there have been eight previous violations of section 75.316 in the last 24 months. While Mr. Hurley indicated he felt I should consider some of the matters about the number of inspection days involved, it, of course, is not necessary for judges to follow the assessment formula in 30 C.F.R. 100.3 when a case has gone to hearing and the judge is making findings of facts on the record containing testimony and exhibits presented by the parties. Since it has not been my practice to pay any attention to what the Assessment Office may have done before a case comes to hearing before me, I find that it is immaterial that the Assessment Office may have made some calculations as to the number of inspection days and that there may be a certain number of violations in the last 24 months, because it has been my consistent practice since starting this work in 1972 to make assessments under the criterion of history of previous violations entirely on whether previous violations of the section before me in a given case have occurred.

Since eight previous violations occurred in a 24-month period, I consider that to be more than I usually encounter in these cases. Consequently, I believe that whatever other penalty might be assessed in this case, a penalty of $100 should be assessed under the criterion of history of previous violations.

The only two criteria that remain to be considered are negligence and gravity. The inspector's finding of a high degree of negligence was based almost entirely on his statement that the weekend entry in the preshift book shows that these curtains had been left down from the previous Friday by the evening crew, and it was his opinion that the curtains should have been rehung during Saturday or Sunday. He felt the failure to do so, especially after it was written up by one of the examiners of the mine, indicated a high degree of negligence. There is, of course, nothing in the ventilation plan in Exhibit 3 which indicates occurrences of changes in the mining height or the width of the entries which have been mentioned in this proceeding and which have been noted in my findings of fact, supra. I recognize that the company had a problem here in trying to use the curtains at an entry which was barely wide enough for the equipment. I'm taking that into consideration as a mitigating factor in assessing the penalty; but the fact that the operator failed to install curtains on Saturday and Sunday cannot be ignored because that is what the plan requires, and the Act too, for that matter. The curtain is required to be maintained continuously and should, therefore, have been erected whether or not any production was being performed. Consequently, I find that there was a relatively high degree of negligence.

Now, we come to the final criterion of gravity. I don't think that we can say that this constituted more than a moderate amount of gravity because it is a fact that no production was going on. At the time the citation was actually written, it is a fact that methane was only .01 to .02 of 1 per cent. An inspector checked all the entries with his methane detector and could not even get a reading, so while there was a potential

there for a possible injury, the fact is that at the time the inspector issued the citation there was, at most, a moderate seriousness in the violation.

In conclusion, I find that the company abated the violation in less than the time given by the inspector, that it is a small company, that the gravity of the violation was not great, and that there was a relatively high degree of negligence. In such circumstances, I find that a penalty of $300 is appropriate, to which $100 will be added under the criterion of history of previous violations, making a total penalty of $400.

After I had rendered the bench decision set forth above, I learned that the Commission had issued in Secretary of Labor (MSHA) v. Paramont Mining Corporation, Docket No. VA 81-45, on September 21, 1981, an order denying a petition for interlocutory review of an order issued on August 19, 1981, by Administrative Law Judge George A. Koutras in that proceeding. Judge Koutras' order had granted the Secretary's motion for partial summary decision as to the question of whether respondent Paramont Mining Corporation could raise the issue of the validity of an unwarrantable-failure order in a civil penalty proceeding. Inasmuch as the Commission declined to grant Paramonth's petition for interlocutory review, it may appear that I erred in considering the merits of the unwarrantable-failure citation in this civil penalty proceeding. In C.C.C.-Pompey Coal Co., Inc.,2 FMSHRC 1195 (1980), the Commission held that a judge should not issue a bench decision in final written form without considering the holdings in Commission decisions which were issued between the time the bench decision was rendered at the hearing and the time the bench decision is issued in final form.

The primary basis for my ruling in this case that respondent could obtain a review of the validity of the unwarrantable-failure citation in a civil penalty proceeding was that the Commission had considered the meaning to be assigned to the phrase "significant and substantial" in its decision in Cement Divison, National Gypsum Co., 3 FMSHRC 822 (1981), even though the proceeding in which the Commission considered that issue was a civil penalty proceeding. Upon further examination of the Commission's decision in the National Gypsum case, I have noted that all of the alleged violations in that proceeding involved citations on which the inspector had checked a "block" showing that he considered all of the alleged violations to be "significant and substantial" as that term is used in section 104(d) of the Act. The Commission considered the meaning of that phrase in order to clarify the interpretation which should be given to the words "significant and substantial" in light of some decisions issued by the former Board of Mine Operations Appeals after its decision in Zeigler Coal Co., 3 IBMA 448 (1974), was reversed in UMWA v. Kleppe, 532 F.2d 1403 (D.C. Cir. 1976), because the Board had held that findings as to "significant and substantial" had to be made before unwarrantable failure orders could be issued under section 104(c) of the Federal Coal Mine Health and Safety Act of 1969. The Commission clarified the definition which should be ascribed to "significant and substantial" in a civil penalty case because the inspectors were routinely designating ordinary violations alleged in citations written under section 104(a) of the 1977 Act as being "significant and substantial". The Commission believed that such

routine employment of the term "significant and substantial" might eventually be used as a basis for finding an operator to have a "pattern of violations" pursuant to the provisions of section 104(e) of the Act.

My conclusion in the bench decision, supra, to the effect that the Commission's consideration of "significant and substantial" in the National Gypsum case indicated that the Commission has not prohibited consideration of the validity of citations in civil penalty cases failed to comment on the difference between the breadth of review which is permitted of citations issued under the 1977 Act as opposed to the constraints of review which are placed on orders issued under the 1977 Act. The change in the language as to review of citations under the 1977 Act, as opposed to review of notices of violation under the 1969 Act, (FOOTNOTE 2) was discussed by the Commission in Energy Fuels Corp., 1 FMSHRC 299 (1979), in which the Commission stated (at p. 302):

> * * * On the other hand, section 105(a), when read with section 105(d), may be read to permit an operator to await the issuance of the notification of proposed assessment of penalty before deciding whether to contest the entire citation, rather than require the operator to so wait. [Emphasis in original.]

At page 309 of the Energy Fuels case, the Commission further stated:

> * * * If the citation lacked special findings, and the operator otherwise lacked a need for an immediate hearing, we would expect him to postpone his contest of the entire citation until a penalty is proposed. * * *

In Wolf Creek Collieries Co., Docket No. PIKE 78-70-P, issued March 26, 1979, the Commission agreed with the former Board's consistent holdings that, under the 1969 Act, a respondent could not obtain review of the validity of orders in civil penalty proceedings (Eastern Associated Coal Corp., 1 IBMA 233 (1972); Zeigler Coal Co., 1 IBMA 216 (1973); Plateau Mining Co., 2 IBMA 303 (1973); Buffalo Mining Co., 2 IBMA 327 (1973); North American Coal Corp., 3 IBMA 93 (1974); Zeigler Coal Co., 3 IBMA 366 (1974); Jewel Ridge Coal Corp., 3 IBMA 376 (1974); Peggs Run Coal Co., 5 IBMA 3 (1975); and Ashland Mining Development Co., Inc., 5 IBMA 259 (1975)). The Commission made a similar holding as to the 1969 Act in Pontiki Coal Corp., 1 FMSHRC 1476 (1979). In Van Mulvehill Coal Co., Inc., 2 FMSHRC 283 (1980), the Commission held that the validity of orders issued under the 1977 Act is not to be considered in civil penalty proceedings.

My review of the Commission's holdings with respect to obtaining review of the validity of citations in civil penalty proceedings, as opposed to obtaining review of the validity of orders in civil penalty cases, shows that I correctly interpreted the Commission's consideration of the term "significant and substantial" in the National Gypsum case, supra, to mean that an operator may obtain review of the validity of citations in civil penalty proceedings, but may not obtain review of the validity of orders in civil penalty proceedings. Inasmuch as the question of the validity of a citation was before me in this proceeding, I reaffirm my finding that it is permissible for an

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operator to contest the validity of a citation in a civil penalty proceeding even if the operator has failed to seek review of that citation by filing a notice of contest under section 105(d) of the Act within 30 days after the citation was issued. Therefore, the fact that the Commission declined to grant an interlocutory review of Judge Koutras' decision in the Paramont Mining case in which he had held that an operator may not obtain a review of the validity of an order, as opposed to a citation, in a civil penalty proceeding, is consistent with my holding in this proceeding that an operator may obtain review of the validity of a citation, but not an order, in a civil penalty proceeding. In short, I find that it was not error for me to grant review of the validity of a citation in this proceeding and that portion of my decision which so held is confirmed.

WHEREFORE, it is ordered:

(A) Citation No. 939522 was correctly issued on January 26, 1981, under section 104(d)(1) of the Act and the citation is affirmed.

(B) Within 30 days from the date of this decision, respondent shall pay a civil penalty of $400.00 for the violation of section 75.316 alleged in Citation No. 939522.

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

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~FOOTNOTE_ONE

1 A further statement of the reasons for my belief that an operator may obtain review of the validity of a citation, as opposed to an order, in a civil penalty proceeding is set forth at the end of my bench decision.

~FOOTNOTE_TWO

2 Under the 1969 Act, review of a notice of violation was restricted to the question of whether the time set by the inspector for abatamant was unreasonable (UMWA v. Andrus, 581 F.2d 888 (D.C. Cir. 1978)).