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SOL (MSHA) V. PRICE COAL
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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. WEST 79-39

v.

A/O No. 42-01202-03011

PRICE RIVER COAL COMPANY, SUCCESSOR TO,
BRAZTAH CORPORATION,
RESPONDENT

MINE: Braztah 5

Appearances:

Phyllis K. Caldwell, Esq., Office of Henry C. Mahlman,
Regional Solicitor, United States Department of Labor,
Denver, Colorado,

For the Petitioner

Stanley V. Litizzette, Esq., Price River Coal Company,
Helper, Utah,

For the Respondent

Before: Judge John J. Morris

DECISION

The Secretary of Labor, on behalf of the Federal Mine Safety and Health Administration (MSHA), charges respondent Price River Coal Company, successor in interest to Braztah Corporation, with violating the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

Petitioner issued his citation number 9945672 under the authority of Section 104(f) of the Act alleging that Braztah violated Title 30, Code of Federal Regulations 70.100B.

The cited standard provides as follows:

Subpart B - Dust Standards

70.100 Dust standards; respirable dust. (b)
Effective December 30, 1972, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

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The Secretary proposes a civil penalty of \$240 for this violation.

ISSUES

The issues are whether Price violated the standard and, if it did, what penalty is appropriate.

SUMMARY OF THE EVIDENCE

The evidence, which is uncontroverted, shows that the citation here was issued by MSHA inspector Al Gray on the basis of an analysis generated by a computer printout (Tr. 4). Ten samples, which were submitted by respondent to MSHA, show accumulated respirable dust totals of 21.3 milligrams. Within limits MSHA deems that a violation occurs at 20.9 milligrams (Tr. 5).

The citation issued to respondent cites as violative of the Act the following condition:

The concentration of respirable dust in section 030-0 is above the 20 milligram limit. Based on the results of 10 samples collected by the company's sampling program, the cumulative total is 21.3 milligrams for an average of 2.1 milligrams per cubic meter of air. See attached computer printout dated 11/20/70. Respirable dust samples shall be collected from the working environment of the high-risk occupation in section 030-0 on all production shifts and continued until compliance is attained. Approved respiratory equipment shall be made available to all persons working in the area (Exhibit P-1).

The potential health hazard of contracting pneumoconiosis arises from prolonged exposure to respirable dust (Tr. 5, 15). Four miners were exposed (Tr. 15-16).

DISCUSSION

The Commission has ruled that the respirable dust standard is enforceable. Alabama By-Products Corporation 2 FMSHRC 2760 (October 1980). Further, the foregoing facts establish a violation of the standard.

Respondent offered no evidence but contends that the government cannot prevail such it failed introduce an essential part of its case (Tr. 27).

Respondent did not identify the "essential part" of MSHA's case but I assume respondent refers to the failure of MSHA to introduce the computer printout.

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I find no merit in this contention. Respondent could have, but did not, move that the printout be produced. Further, respondent apparently had the computer printout in its possession. The citation reads in part: "See attached computer printout" (Exhibit P1). The citation should be affirmed.

CIVIL PENALTY

Section 110(i) of the Act [30 U.S.C. 820(i)] contains the statutory criteria for assessing a civil penalty.

In considering that criteria in the light of the facts presented here I deem that the proposed penalty of \$240 is appropriate.

Based on the foregoing findings of fact and conclusions of law I enter the following:

ORDER

Citation 9945672 and the proposed penalty therefor are AFFIRMED.

John J. Morris
Administrative Law Judge