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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

v.

PRICE RIVER COAL COMPANY,  
SUCCESSOR TO  
BRAZTAH CORPORATION,  
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 79-59

A/C No. 42-00165-03016

MINE: Braztah No. 3

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 a safety regulation adopted under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

Citation 247212 alleges a violation of 30 C.F.R. 75.400. The regulation provides as follows:

75.499 Accumulation of combustible materials.

(Statutory Provision)

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

A penalty of \$225 is proposed for the foregoing violation.

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Citation 247213 alleges a violation of 30 C.F.R. 75.316. The regulation provides as follows:

75.316 Ventilation system and methane and dust control plan.

A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form on or before June 28, 1970. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every 6 months.

A penalty of \$130 is proposed for this violation.

#### ISSUES

The threshold issue is whether the proposal to assess penalties should be dismissed for late filing; if not, a further issue is whether respondent violated the regulations and, if so, what penalty is appropriate.

#### LATE FILING OF PROPOSED PENALTIES

The threshold issue determinative of this case is whether the proposed penalties should be vacated due to the late filing by petitioner of his proposal for penalties.

The record shows that respondent was cited on December 20, 1978 for the alleged violations of the regulations. On November 5, 1979 petitioner filed his proposal for penalties together with a motion for the Commission to accept such late filing. In support of his motion petitioner recited that he had a high volume of case workload; further, he had lacked clerical personnel since mid-September, 1979.

Respondent opposed the motion for late filing and renewed the objection at trial (Tr. 3). In its written motion in opposition Respondent states that its key witness, Stewart Jones, on whom the initial citation was served, had resigned his position with the company and his present whereabouts were unknown.

On January 4, 1980 an order was entered accepting the late filing. Respondent's objection were overruled but it was indicated that respondent could offer evidence of prejudice at the hearing on the merits. The hearing took place in Salt Lake City, Utah on March 19, 1981.

In Salt Lake County Road Department 3 FMSHRC 1714 (July

1981) the Commission considered the effect of the Secretary in failing to comply

