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SOL (MSHA) V. ADAMS 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. KENT 82-10 A. C. No. 15-10559-03002
v.	
ADAMS COAL ENTERPRISES, INC., RESPONDENT	No. 1 Preparation Plant

DEFAULT DECISION

Appearances: George Drumming, Jr., Esq., Office of the Solicitor, U. S. Department of Labor, for Petitioner
No one appeared at the hearing on behalf of Respondent

Before: Administrative Law Judge Steffey

When the hearing in the above-entitled proceeding was convened in Prestonsburg, Kentucky, on April 23, 1982, pursuant to written notice of hearing dated March 16, 1982, and received by respondent on March 19, 1982, counsel for the Secretary of Labor entered his appearance, but no one appeared at the hearing to represent respondent.

Under the provisions of 29 C.F.R. 2700.63(a), when a party fails to comply with an order of a judge, an order to show cause shall be directed to the party before the entry of any order of default. An order to show cause was sent to respondent on April 26, 1982, pursuant to section 2700.63(a), requiring respondent to show cause why it should not be found to be in default for failure to appear at the hearing convened on April 23, 1982. A return receipt in the official file shows that respondent received the show-cause order on May 3, 1982. The time within which a reply to the show-cause order should have been received has passed and no reply has been submitted.

Inasmuch as no reply to the show-cause order was submitted, I find respondent to be in default for failure to appear at the hearing convened on April 23, 1982. Section 2700.63(b) of the Commission's rules provides that "[w]hen the Judge finds the respondent in default in a civil penalty proceeding, the Judge shall also enter a summary order assessing the proposed penalties as final, and directing that such penalties be paid."

I have examined the Proposed Assessment sheet in the official file and I find that the Assessment Office has proposed a penalty for the single violation of 30 C.F.R. 71.802 involved in this proceeding after considering the six assessment criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(i), in accordance with the assessment formula described in 30 C.F.R. 100.3. Since section 2700.63(b)

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provides for the proposed assessment to be entered as a matter of course in a default proceeding, it is unnecessary for me to discuss the six criteria in detail. I have discussed the proposed assessment solely to have it reflected in my decision that the Assessment Office derived the proposed penalty of \$28.00 in a proper manner. The small penalty is appropriate in this instance because respondent is a small operator, has no history of previous violations, and the violation appears to have been nonserious.

WHEREFORE, it is ordered:

Adams Coal Enterprises, Inc., having been found to be in default, is ordered, within 30 days from the date of this decision, to pay a civil penalty of \$28.00 for the violation of section 71.802 alleged in Citation No. 983263 dated June 1, 1981.

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