

CCASE:  
SOL (MSHA) V. AUSTIN POWER  
DDATE:  
19860529  
TTEXT:

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. CENT 86-40  
A.C. No. 41-01192-03503

v.

Big Brown Strip

AUSTIN POWER, INCORPORATED,  
RESPONDENT

AUSTIN POWER, INCORPORATED,  
CONTESTANT

CONTEST PROCEEDINGS

Docket No. CENT 86-59-R  
Citation No. 2339411; 8/20/85

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

Docket No. CENT 86-60-R  
Citation No. 2339412; 8/20/85

Docket No. CENT 86-61-R  
Citation No. 2339413; 8/20/85

Big Brown Strip

ORDER

By motion filed May 13, 1986, the Secretary seeks to amend Citation No. 2339413, to allege in the alternative either a violation of 30 C.F.R. 77.205(e) or a violation of 30 C.F.R. 77.404(a). Austin Power opposes the motion on the ground that the Secretary's attempt to modify the citation is untimely and will prejudice Austin Power's trial preparation.

Administrative pleadings may be liberally construed and easily amended, National Realty and Construction Company v. Occupational Safety and Health Review Commission 489 F.2d 1257 (D.C.Cir.1973), Secretary of Labor v. United States Steel Corporation, 6 FMSHRC 1908, 1916 (August 1984). Further, I am not convinced that Austin Power has been prejudiced by the proposed amendment. The factual basis for the issuance of the citation is the "condition or practice" stated by the inspector

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on the face of the citation served on Austin Power, and MSHA has the burden of proof. Austin Power will have a full opportunity to cross-examine MSHA's witnesses at the hearing and is free to present its evidence to rebut the charges.

Austin Power's opposition to the motion IS DENIED, and the Secretary's motion to amend the citation to charge alternative alleged violations IS GRANTED.

George A. Koutras  
Administrative Law Judge