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SOL (MSHA) V. R & S 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. CENT 86-49
A.C. No. 03-01599-03501

v.

No. 1 Mine

R & S COAL COMPANY,
RESPONDENT

DECISION

Appearances: Max A. Wernick, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas, for
Petitioner; Coy J. Rush, Jr., Esq., Hixon,
Cleveland & Rush, Paris, Arkansas, for Respondent

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary of Labor seeks civil penalties for six alleged violations of mandatory health and safety standards cited on October 28, 1985. Respondent contends that it was not subject to the Act at the time of the alleged violations, and denies that it violated the standards as alleged. Pursuant to notice, the case was heard on the merits on August 14, 1986 in Fort Smith, Arkansas. Lester Coleman testified on behalf of the Secretary. Ricky Brown testified on behalf of Respondent. Both parties waived their rights to file posthearing briefs. I have considered the entire record and the contentions of the parties, and make the following decision.

FINDINGS OF FACT

1. At all times pertinent to this proceeding, Respondent was the operator of a surface coal mine in Sebastian County, Arkansas, known as the No. 1 Mine.

2. The mine was opened and an MSHA ID Number was issued about October 10, 1985. Prior to that date, Respondent had operated a surface coal mine in Lamar, Arkansas. Coal was last removed from the Lamar mine in May or June 1985. Thereafter,

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Respondent was engaged in reclamation work at the Lamar mine, and it began to move its mining equipment to the No. 1 Mine.

3. The R & S Mine at Lamar had approximately 5 to 6 employees. It had been inspected by MSHA since about 1980. It had first aid equipment at the mine, and had made arrangements for emergency medical and ambulance facilities at the mine. It had filed a copy of a ground control plan with MSHA, had sanitary toilet facilities and had been granted a waiver by MSHA for bathing facilities. A mine office was maintained at the Lamar Mine.

4. As of October 28, 1985, no coal had been removed from the No. 1 Mine. Some of the overburden covering the coal seam had been removed, namely part of the topsoil. Three employees were at the mine site on October 28, 1985 and were doing mechanical work on mining equipment. A caterpillar bulldozer and a Michigan Front End loader were on the mining property. The topsoil had been removed by the bulldozer, and no blasting had been performed as of October 28.

5. Respondent sells its entire output of coal to the Arkansas Charcoal Company in Paris, Arkansas. The Charcoal is sold in states other than Arkansas. The subject mine produced about 2000 tons of coal from October 1985 to March 30, 1986 and 4000 to 5000 tons from April to June 1986. Approximately 8000 tons had been produced between the date the mine was opened and the date of the hearing.

6. Equipment used in the mine include 1 DÄ8 and 1 DÄ9 Caterpillar bulldozer, a Michigan Frontend loader, a track loader and a John Deere Road digger. This equipment and the replacement parts for it were manufactured outside of the State of Arkansas.

7. Citations were issued for safety violations at the Lamar plant, but there is no evidence as to their number. There have been no lost time accidents at Respondent's mines in the past four years.

8. Prior to the time the No. 1 Mine was opened, MSHA inspector Lester Coleman informed the Superintendent that he had to get the required paper work into the MSHA office. The Inspector gave him a packet containing instructions and the necessary forms.

9. On October 28, 1985, Federal Mine Inspector Coleman issued Citation No. 2339807 charging a violation of 30 C.F.R. 77.1707(a) because there was no first aid equipment at the mine site. The equipment was located at the Lamar mine and Respondent's Superintendent stated that he just had not had time to transfer it to the No. 1 Mine. The citation was terminated

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October 30, 1985 when the first aid equipment was brought to the mine site.

10. On October 28, 1985, Inspector Coleman issued Order No. 2339810 charging a violation of 30 C.F.R. 77.1702(a) because Respondent failed to make arrangements for 24-hour emergency medical assistance for any person injured at the mine. Such arrangements were effected on October 29, 1985, and the order was terminated on October 30.

11. The subject mine was located in a remote area, but there was a medical clinic located in a town 5 miles away, and another 15 miles away.

12. On October 28, 1985, Inspector Coleman issued order 2339811, charging a violation of 30 C.F.R. 77.1702(b) because Respondent failed to make arrangements for ambulance service or otherwise provide for 24-hour emergency transportation. The order was terminated October 30, 1985, when Respondent made arrangements for 24-hour emergency transportation.

13. On October 28, 1985, Inspector Coleman issued citation 2339812 because Respondent did not file a copy of the ground control plan for the subject mine with MSHA. Respondent's superintendent stated that he was unaware of the requirement that the ground control plan be filed. The citation was terminated when the plan was filed on October 30, 1985.

14. On October 28, 1985, Inspector Coleman issued citations 2339813 and 2339814 because Respondent did not provide bathing facilities or sanitary toilets for the miners, and because it did not maintain a mine office at the mine site. These citations were terminated on October 29, 1985 when Respondent provided a sanitary toilet at the mine, and applied for a waiver of the bathing facilities requirement.

ISSUES

1. Whether Respondent is subject to the provisions of the Mine Safety Act in the operation of its No. 1 Mine?

2. Whether Respondent violated the safety standards as alleged, and if it did, what are the appropriate penalties for the violations.

CONCLUSIONS OF LAW

1. Respondent was at all times pertinent to this proceeding subject to the provisions of the Act, and I have jurisdiction over the parties and subject matter of this proceeding.

Section 4 of the Act provides that each mine, the products of which enter commerce, or the operations or products of which affect commerce is subject to the Act. The fact that Respondent's coal is sold entirely intrastate does not remove it from the Act's requirements. See Wickard v. Filburn, 317 U.S. 111 (1942); Marshall v. Bosak, 463 F.Supp. 800 (E.D.Pa.1978); Secretary v. Valley Limestone Co., 4 FMSHRC 357 (1982) (ALJ). Respondent used substantial amounts of equipment which originated out of state. Its products, although originally sold intrastate, were ultimately used both intrastate and out of state. The evidence clearly establishes that its operations affect interstate commerce.

2. The violations cited are not seriously disputed. I conclude that the six violations involved in this proceeding occurred.

3. The failure to have the required first aid supplies and equipment at the mine site, the failure to make arrangements for emergency medical care and the failure to make arrangements for ambulance service are all moderately serious violations under the circumstances of this case. Each of these violations could have resulted in serious injuries to miners.

4. Each of the six violations involved herein resulted from Respondent's negligence. It knew or should have known of the requirements of the Act and the regulations, and failed because of carelessness to take the necessary steps to avoid the violations.

5. Respondent is a small operator, does not have a significant history of pervious violations, and promptly abated the violations after being cited.

ORDER

Based on the above findings of fact and conclusions of law, and considering the criteria in section 110(i) of the Act, I conclude that the following penalties are appropriate.

CITATION/ORDER	PENALTY
2339809	\$ 150
2339810	150
2339811	150
2339812	50
2339813	30
2339814	30
	\$ 560

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ORDER

Respondent is ORDERED to pay within 30 days of the date of this decision \$560 as civil penalties for the violations found herein.

James A. Broderick
Administrative Law Judge