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SOL (MSHA) V. TRIPLE 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. WEVA 86-432  
A.C. No. 46-06816-03508

v.

No. 1 Mine

TRIPLE D COAL COMPANY,  
RESPONDENT

ORDER OF DEFAULT

Before: Judge Weisberger

Petitioner on August 8, 1986, filed its Petition of Assessment of Civil Penalty proposing a penalty of \$306 and an Answer was filed by Respondent on February 18, 1987.

On February 25, 1987, I issued a Prehearing Order directing the parties on or before March 10, 1987, to confer for the purpose of discussing settlement, and if settlement was not agreed upon by March 17, 1987, to serve each other and me lists of witnesses who may testify, exhibits which may be introduced, and matters which can be stipulating at the hearing. The Order further stated that failure to comply will subject the defaulting party to a show cause order and possible default decision.

On March 27, 1987, Petitioner filed a statement with me indicating that it had not received any response, from Respondent, to its letter and telephone request asking Respondent's representative, Jack L. Kinder, to contact Petitioner. Prior to April 2, 1987, I had not received, from Respondent, any response to my Prehearing Order of February 25, 1987.

On April 2, 1987, I issued a Show Cause Order ordering Respondent as follows: "%y(3)27 to, within 10 days, confer with Petitioner for the purpose of discussing settlement, and if settlement is not reached within 20 days to serve Petitioner and me with all items referred to in paragraph 2 of my Prehearing Order or show good reason for your failure to comply with this Order." Respondent was advised that if it did not comply with the Show Cause Order it will be placed in default.

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On April 8, 1987, a letter was received by me from Respondent in which Respondent's President, Jack L. Kinder, indicated, in essence, that Respondent had "shut down" on September 17, 1985. Mr. Kinder also described, in general, his financial plight. However, the terms of the Prehearing Order were not complied with.

Therefore, it is ORDERED that Respondent is in DEFAULT. It is further ORDERED that the penalties proposed in the Assessment Order, attached as Exhibit A to the petitioner, in the total amount of \$306 are imposed as the final order of the Commission. It is further ORDERED that Respondent shall pay such penalties in the of amount of \$306 within 30 days of the date of this order.

Avram Weisberger  
Administrative Law Judge