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SOL (MSHA) V. GRATESIDE COAL  
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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 PROCEEDINGS

Docket No. KENT 87-52  
A.C. No. 15-09926-03507

v.

Docket No. KENT 87-53  
A.C. No. 15-09926-03508

GRATESIDE COALS, INC.,  
RESPONDENT

Grateside No. 3 Surface

ORDER OF DEFAULT

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). Docket No. KENT 87-52, concerns the petitioner's proposals for assessment of civil penalties in the amount of \$1,972, for 20 section 104(a) citations alleging violations of various mandatory safety standards found in Parts 48 and 77, Title 30, Code of Federal Regulations. Docket No. KENT 87-53, concerns proposals of assessment of civil penalties in the amount of \$472, for five section 104(a) citations alleging violations of certain mandatory safety standards found in Part 77, Title 30, Code of Federal Regulations.

The petitioner has certified that its civil penalty proposals were mailed to respondent's counsel of record on February 27, 1987, and a copy of a letter to counsel from the petitioner's Nashville, Tennessee Solicitor's Office reflects that counsel was advised that she had 30 days to file answers pursuant to Commission Rule 28, 29 C.F.R. 2700.28. Counsel was also advised that the failure to file answers within the 30-day period could result in the proposed assessments being entered as the final orders of the Commission as provided by procedural Rule 63, 29 C.F.R. 2700.63. As of this date, no answers have been filed.

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In view of the respondent's failure to file answers to the petitioner's civil penalty proposals, I issued an Order to Show Cause on April 10, 1987, ordering the respondent to state within 10 days why it should not be held in default for its failure to file answers in these proceedings. The certified mail postal receipt received from the Post Office Department reflects that counsel for the respondent received my Order on April 16, 1987. However, counsel has not responded.

#### Discussion

29 C.F.R. 2700.39, provides as follows:

A party against whom a penalty is sought shall file and serve an answer within 30 days after service of a copy of the proposal on the party. An answer shall include a short and plain statement of the reasons why each of the violations cited in the proposal is contested, including a statement as to whether a violation occurred and whether a hearing is requested.

29 C.F.R. 2700.63, provides as follows:

(a) Generally. When a party fails to comply with an order of a judge or these rules, an order to show cause shall be directed to the party before the entry of any order of default or dismissal.

(b) Penalty proceedings. When 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.

The respondent in these proceedings has failed to file answers to the petitioner's civil penalty proposals, and it has also failed to respond to my Order to Show Cause. Under the circumstances, I conclude and find that the respondent is in default and has waived its right to a hearing. I see no reason why the petitioner's proposed civil penalty assessments should not be made the final order of the Commission.

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ORDER

Judgement by default is herewith entered in favor of the petitioner, and the respondent IS ORDERED TO IMMEDIATELY PAY to the petitioner the sum of \$2,444, as the final civil penalty assessments for the citations in question.

George A. Koutras  
Administrative Law Judge