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SOL (MSHA) V. BIRCHFIELD MINING
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. WEVA 87-272
A.C. No. 46-07273-03501

v.

No. 1 Mine

BIRCHFIELD MINING INCORPORATED
RESPONDENT

DECISION

Appearances: Mary K. Spencer, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia
for Petitioner;
William D. Stover, Esq., Beckley, West
Virginia for Respondent.

Before: Judge Melick

This case is before me upon remand by a majority of the Commission to determine whether its findings that the violation at issue was not "significant and substantial" would affect the amount of civil penalty imposed below.

In the decision below, 9 FMSHRC 2209 (1987), it was found that the failure to complete and record a pre-shift examination required by 30 C.F.R. 75.303(a) was a "serious" violation and warranted a civil penalty of \$400. The Commission majority found however that the violation did not contribute "a measure of danger to safety" and in essence did not constitute a serious hazard. Since the gravity determination below was a significant component in the amount of penalty established, there must now be a corresponding reduction in penalty. Accordingly considering the criteria under section 110(i) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., I now direct that a penalty of \$300 be paid.

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ORDER

Birchfield Mining Incorporated is hereby directed to pay a civil penalty of \$300 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge
(703) 756-6261