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SOL (MSHA) V. TWIN OAK CONSTRUCTION
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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. KENT 88-153
A.C. No. 15-14872-03512

v.

No. 1 Surface

TWIN OAK CONSTRUCTION
COMPANY,
RESPONDENT

DECISION

Appearances: Anne T. Knauff, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner.

Before: Judge Fauver

The Secretary of Labor brought this proceeding for civil penalties for alleged violations of safety standards under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

The case was called for hearing in Huntington, West Virginia, on January 18, 1989. Government counsel appeared with her witnesses and documentary evidence. Respondent did not attend the hearing.

The Government's inspector was sworn and testified, and the documentary evidence was received.

Because of Respondent's default, it is held that the Secretary is entitled to a default decision. Therefore, the allegations in the six citations involved are deemed to be true and are incorporated in this Decision as findings of fact. Also, the allegations of violations of the cited safety standards are deemed to be true and are incorporated in this Decision as conclusions of law.

Respondent has demonstrated a persistent and deliberate failure to pay prior civil penalties for violations of mine

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safety standards that are long overdue and not in present litigation. In the 24-month period preceding the citations involved in this case, Respondent was assessed \$2,813 for 24 violations and of that amount, Respondent has not paid any of the civil penalties. The recalcitrance shown by this record of nonpayment is part of Respondent's compliance history, cognizable under section 110(i) of the Act. In light of this poor compliance record, I agree with the Secretary's proposal that the civil penalties in this case should be higher than the original amounts proposed.

Based upon the above, and the other criteria for civil penalties in section 110(i) of the Act, I assess civil penalties for the following violations in the amounts shown:

Citation No.	Civil Penalty
2979395	\$ 250
2979396	\$ 250
2979397	\$ 250
2979398	\$ 250
2979399	\$ 300
2979400	\$ 300
	\$1,600

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay the above civil penalties of \$1,600 within 30 days of this Decision.

William Fauver
Administrative Law Judge