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SOL (MSHA) V. URRALBURU 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. WEST 88-254-M  
A.C. No. 05-03211-05501

v.

Breezy Mine

URRALBURU MINING COMPANY,  
RESPONDENT

DECISION

Appearances: Robert J. Murphy, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner.

Before: Judge Lasher

This matter arises upon the filing of a proposal for penalty by the Secretary of Labor on August 11, 1988, seeking assessment of civil penalties against Respondent for the violations alleged in two Citations numbered 2640413 and 2640414; such Citations issued pursuant to the provisions of Section 104(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(d) (1977), and charged infractions of 30 C.F.R. 57.1000, and 30 C.F.R. 41.20, respectively.

As above indicated, Petitioner was represented at this hearing by counsel but Respondent, which the record shows received actual and legal notice of the hearing held on February 13, 1989, neither appeared nor advised the Presiding Judge or counsel for Petitioner of its intent not to appear. In such circumstances the testimony of the issuing inspector, Dennis J. Tobin, was submitted on the record under oath in support of the Petitioner's position together with certain documentary evidence. Based thereon, at the close of the hearing, this bench decision was issued.

Findings with respect to Citation No. 2640413:

This Citation was issued by Inspector Tobin on March 16, 1988, when he discovered, while enroute to inspect another mine, tire tracks leading to the subject mine, i.e., Respondent's Breezy Mine. Inspector Tobin parked his vehicle at the mine entrance and waited until the mine operator, Ben Urralburu, came

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out of the mine portal in the company of two other miners, one of whom was recognized by the Inspector as a longtime employee of Mr. Urralburu.

At this time Mr. Urralburu advised the inspector that he had just started mining, and the Inspector advised Mr. Urralburu of the requirement of 30 C.F.R. 51.1000 for a mine operator to notify MSHA before commencement of mining operations.

30 C.F.R. 57.1000 states, "The owner, operator, or person in charge of any metal and nonmetal mine shall notify the nearest Mine Safety and Health Administration Metal and Nonmetal Mine Safety and Health Subdistrict Office before starting operations of the approximate or actual date mine operations will commence."

Other provisions of this regulation require that the notification include the name of the mine, its location, the name of the person in charge and other pertinent data.

Mr. Urralburu indicated, as his justification for failure to provide such notification, that Union Carbide had filed such papers for him in the past. The Inspector apparently did not recognize this as legal justification sufficient to excuse the violation, nor do I. The violation consists, without more, of the failure to notify MSHA of the contemplated commencement of mining operations. The importance of such notification to implementation of the safety program created by Congress is obvious. It is therefore concluded that a violation of 30 C.F.R. 57.1000 occurred as charged and an appropriate penalty therefor will be subsequently assessed herein.

#### Findings with respect to Citation No. 2640414:

This Citation, actually issued on March 17, 1988, but back dated to March 16, 1988, by Inspector Tobin, charges the Respondent with failing to file a legal identity report in accordance with 30 C.F.R. 41.20. Without belaboring the point, the record clearly establishes that Respondent did in fact fail to file such report, and such failure in and of itself constitutes the violation.

Accordingly, the Inspector's judgment in connection with the issuance of this Citation is affirmed, and the violation charged is found to have occurred.

#### Assessment of Penalties

At the hearing Petitioner presented documentary evidence (Exhibit P-1) indicating that during the two-year period preceding the issuance of the subject Citations Respondent had a history of two prior violations.

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Petitioner does not contend that either of the violative conditions reflected in the two Citations was not promptly abated in good faith by Respondent upon notification of such.

The record reflects, and Respondent has not established of course at the hearing, or for that matter in pretrial submissions prior to the hearing, that assessment of penalties at the level sought by Petitioner would jeopardize its ability to continue in business.

Based on information provided by the inspector on the face of both Citations with respect to the likelihood of occurrence of injuries and the contemplated severity of any such, neither violation is found to be serious.

This operator, who is found to be a small mine operator, had approximately 20 years of prior mining experience. Based thereon, and the content of conversations with the issuing Inspector at the time of the issuance of the Citations, it is both found and inferred that the Respondent had knowledge of the requirements of the two regulations infringed and accordingly Respondent is found to be negligent in the commission of both violations.

Petitioner seeks assessment of \$20 for each of the two violations. Such is found appropriate and is here assessed.

ORDER

Citations numbered 2640413 and 2640414 are both affirmed.

Respondent, if it has not previously done so, is ordered to pay the total sum of \$40 to the Secretary of Labor within 30 days as and for the civil penalties here assessed.

Michael A. Lasher, Jr.  
Administrative Law Judge