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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 89-70
A.C. No. 46-04266-03543

v.

Meredith Mine

BULL RUN MINING, INCORPORATED,
RESPONDENT

DECISION

Appearances: Carol B. Feinberg, Esq., U.S. Department of Labor,
Office of the Solicitor, Arlington, Virginia, for
Petitioner.

Before: Judge Maurer

STATEMENT OF THE CASE

This proceeding concerns a proposal for assessment of civil penalty 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), seeking a civil penalty assessment of \$450 for an alleged violation of the mandatory safety standards found in 30 C.F.R. Part 75.

The respondent contested the violation and requested a hearing. Pursuant to notice, a hearing was convened in Morgantown, West Virginia, on June 30, 1989, and while the petitioner appeared, the respondent did not. In view of the respondent's failure to appear, the hearing proceeded without them. For reasons discussed later in this decision, respondent is held to be in default, and is deemed to have waived its opportunity to be further heard in this matter.

The record in this case indicates that a Notice of Hearing dated May 2, 1989, setting this case down for hearing in Morgantown, West Virginia, on June 30, 1989, was received by the respondent on May 4, 1989.

Subsequently, because the respondent had continued to ignore the petitioner's discovery requests, I issued an Order to Show Cause on June 9, 1989, to the respondent to show cause why it should not be held in default for its failure to comply with my discovery orders of April 25, 1989.

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Respondent has never replied to the above Show Cause Order, nor did any representative of respondent appear at the designated time and place for the hearing of this case.

The hearing proceeded in the respondent's absence. The petitioner put in her prima facie case through the testimony of Inspector Phillips and moved for a decision affirming the order at bar and the proposed civil penalty by default.

Under the circumstances in this record, I conclude and find that the respondent has waived its right to be heard further in this matter and that it is in default. Moreover, I find that the issuance of yet another Show Cause Order would be a futile gesture.

Accordingly, I find that the respondent is in default and the penalty of \$450 proposed by the Secretary in this case must be paid within 30 days of the date of this decision.

Roy J. Maurer
Administrative Law Judge