

CCASE:  
SOL (MSHA) v. LEWALLEN AND PATTERSON TIPPY COAL  
DDATE:  
19910124  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

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

CIVIL PENALTY PROCEEDINGS

Docket No. KENT 89-201  
A.C. No. 15-16040-03411

v.

Docket No. KENT 89-241  
A.C. No. 15-16040-03512

KEITH LEWALLEN AND  
CHARLES PATTERSON, D/B/A  
TIPPY COAL COMPANY,  
RESPONDENTS

Docket No. KENT 89-263  
A.C. No. 15-16040-03515

Docket No. KENT 90-1  
A.C. No. 15-16404-03516

Docket No. KENT 90-55  
A.C. No. 15-16040-03517

No. 1 Mine

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for the Petitioner;  
D. Randall Jewell, Esq., Millward and Jewell,  
Barbourville, Kentucky, for Respondent Keith  
Lewallen;  
Michael Caperton, Esq., London, Kentucky, for  
Respondent Charles Patterson.

Before: Judge Fauver

These consolidated cases for civil penalties under 110(i)  
of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.  
801 et seq., came on for hearing in London, Kentucky, on November  
27, 1990. On the second day of the hearing, the parties moved for  
approval of a settlement agreement. For the reasons stated on the  
record, the motion was granted. This decision confirms the bench  
decision granting the motion to approve settlement.

ORDER

WHEREFORE IT IS ORDERED that:

1. The parties' motion to approve settlement, presented at the hearing, is GRANTED.

2. Respondents Charles Patterson and Keith Lewallen, doing business as Tippy Coal Company, are both found to be operators within the meaning of the Act.

3. Each of the citations and orders for which civil penalties are sought in these proceedings is AFFIRMED.

4. Respondents shall pay civil penalties of \$11,338.00 in the monthly payments set forth below, provided: Respondent Keith Lewallen's liability (which is joint and several with the liability of Respondent Charles Patterson) is limited to \$400.00:

January 27, 1991 - \$500.00  
February 27, 1991 - \$500.00  
March 27, 1991 - \$500.00  
April 27, 1991 - \$500.00  
May 27, 1991 - \$500.00  
June 27, 1991 - \$500.00  
July 27, 1991 - \$500.00  
August 27, 1991 - \$500.00  
September 27, 1991 - \$500.00  
October 27, 1991 - \$500.00  
November 27, 1991 - \$500.00  
December 27, 1991 - \$500.00  
January 27, 1992 - \$500.00  
February 27, 1992 - \$500.00  
March 27, 1992 - \$500.00  
April 27, 1992 - \$500.00  
May 27, 1992 - \$500.00  
June 27, 1992 - \$500.00  
July 27, 1992 - \$500.00  
August 27, 1992 - \$500.00  
September 27, 1992 - \$500.00  
October 27, 1992 - \$838.00

5. The failure of the Respondent Charles Patterson to make any one of the monthly payments ordered herein without the prior consent of the District Manager, District 7, of the Mine Safety and Health Administration, United States Department of Labor,

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shall cause the entire amount of remaining payments to be immediately due and payable.

William Fauver  
Administrative Law Judge