

CCASE:
SOL (MSHA) V. ROX COAL
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 94-609
Petitioner : A. C. No. 36-08223-03533
v. :
ROX COAL INCORPORATED, : Docket No. PENN 94-625
Respondent : A. C. No. 36-08223-03534
: :
: Docket No. PENN 95-2
: A. C. No. 36-08214-03541
: :
: Docket No. PENN 95-10
: A. C. No. 36-08223-03535
: :
: Diamond T B Mine

ORDER ACCEPTING APPEARANCE
PREHEARING ORDER

The penalty petitions in the above-captioned cases were filed on behalf of the Secretary by a "Conference and Litigation Representative", hereafter referred to as a CLR. In the cover letter to each petition the CLR advises that he is an employee of the Mine Safety and Health Administration who has been trained and designated as a CLR and is authorized to represent the Secretary in accordance with an attached Limited Notice of Appearance. In the notice submitted for each case the CLR states that he is authorized to represent the Secretary in all prehearing matters and that he may appear at a hearing if an attorney from the Solicitor's office is also present. The operator has filed answers in these cases and has raised no objection to the CLR's notices.

Subparagraph (4) of section 2700.3(b) of the Commission's regulations, 29 C.F.R. 2700.3(b)(4), provides that an individual who is not authorized to practice before the Commission as an attorney may practice before the Commission as a representative of a party with the permission of the presiding judge. In reviewing these matters, note is taken of the fact that more than 5,000 new cases were filed with the Commission in Fiscal 1994. Obviously, a caseload of this magnitude imposes strains upon the Secretary's resources as well as those of this Commission. It appears that the Secretary is attempting to allocate his resources in a responsible matter. Therefore, I exercise the discretion given me by the regulations, cited above, and determine that in these cases the CLR may represent the Secretary in accordance with the notices he has filed.

It is hereby Ordered that the parties in the above-captioned civil penalty proceedings communicate, by telephone or otherwise,

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and discuss (1) possible settlements, (2) the names of the witnesses each party intends to present at the trial, (3) the possibility of stipulating issues that are not in substantial dispute, and (4) any other matter that may expedite the trial of this proceeding. The attorneys must advise by 5:00 p.m., January 18, 1995, of the results of their discussion.

In the event that by January 18, 1995, I have received no communication from the parties informing me that the aforesaid discussion has taken place and that the possibilities of agreement have been exhausted, a prehearing conference will be held in my office on January 19, 1995, at 10:00 a.m., without further notice. Failure to appear at the conference may result in a default order being issued against the party failing to appear.

If, of course, the parties advise me by 5:00 p.m. on January 18, 1995, as to the results, if any, of their discussion, no appearance will be necessary.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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