

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W., SUITE 600
WASHINGTON, D.C. 20006

October 19, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. CENT 95-171-M
Petitioner : A. C. No. 23-02068-05507
 :
v. :
 : Journagan Portable #12MC
LEO JOURNAGAN CONSTRUCTION :
COMPANY, :
Respondent :

ORDER TO ANSWER OR SHOW CAUSE
ORDER TO ADVISE

Before: Judge Merlin

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. On May 5, 1995, the Solicitor filed a penalty petition for this case. On July 14, 1995, an order to show cause was issued directing the operator to file its answer to the penalty petition. The operator has not filed an answer. It must do so or be held in default and liable for the full amount of the assessed penalties.

On August 28, 1995, a Conference Litigation Representative (CLR) filed with the Commission a copy of an unsigned joint motion to approve settlement which was being sent to the operator for its signature.¹ The motion provides that the operator would agree to pay the originally assessed penalty.

On September 22, 1995, the CLR filed a copy of another unsigned joint settlement motion it was sending to the operator for signature. According to this motion, the parties would settle this case by having the operator provide training in lieu of the proposed assessed penalty.

It is well established that the Act mandates assessment of a monetary penalty for any violation of a mandatory safety standard. Island Creek Company, 2 FMSHRC 279, 280 (February

¹ The CLR has failed to enter an appearance before the Commission.

1980); Van Mulvehill Coal Co., Inc., 2 FMSHRC 283, 284 (February 1980); Tazco, Inc., 3 FMSHRC 1895, 1896 (August 1981). The most recent unsigned settlement motion should not, therefore, be pursued. It is impermissible under the Act.

Because of the foregoing circumstances participation by the Solicitor would be helpful.

In light of the foregoing, it is **ORDERED** that the operator file an answer in this case within 30 days of the date of this order or show cause why it should not be held in default.

It is further **ORDERED** that within 45 days of the date of this order the Solicitor submit a settlement motion or advise whether a hearing will be necessary.

Paul Merlin
Chief Administrative Law Judge

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