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SOL (MSHA) V. EMERY MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

EMERY MINING CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEST 86-84
A.C. No. 42-00121-03598

Deer Creek Mine

AMENDED DECISION

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges respondent with violating safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C.A. 801 et seq., (the Act).

Prior to a hearing on the merits the parties submitted the case on stipulated facts.

The two citations involved here allege respondent violated 30 C.F.R. 75.200 which mandates roof control programs and plans.

Issues

The issues concern the appropriate civil penalties for the violations.

Stipulation

The parties stipulated as follows:

1. The citations at issue in this penalty proceeding were at issue in the contest cases docketed as WEST 86-35-R and WEST 86-36-R, which were fully tried on March 5, 1986. A decision in the cases was rendered on June 10, 1986.

2. A full record was developed by the parties on the issue of violation and the decision of the presiding judge was not reviewed by the Commission.

3. Having been decided in the contest proceedings, the issue of violation in this penalty proceeding is res judicata. Thus, the only issues in this penalty proceeding involve application of the six statutory factors required under 110(i) for determination of an appropriate civil penalty to be assessed against Emery for the violation.