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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. BARB 78-138-P  
(A/O No. 15-02502-02013)

v.

No. 18 Mine

SHAMROCK COAL COMPANY,  
RESPONDENT

DECISION

Appearances: John H. O'Donnell, Attorney, Office of the Solicitor,  
Department of Labor, for Petitioner;  
Neville Smith, Attorney, Manchester, Kentucky, for  
Respondent.

Before: Judge Littlefield

Introduction

This is a proceeding for assessment of civil penalties against the Respondent and is governed by section 110(a) of the Federal Mine Safety and Health Act of 1977 (1977 Act), P.L. 95-164 (November 9, 1977), and section 109(a)(1) of the Federal Coal Mine Health and Safety Act of 1969 (1969 Act), P.L. 91-173 (December 30, 1969). Section 110(a) provides as follows:

The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, shall be assessed a civil penalty by the Secretary which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

Section 109(a)(1) provides as follows:

The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, except the provisions of title 4, shall be assessed a civil penalty by the Secretary

under paragraph (3) of this subsection which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense. In determining the amount of the penalty, the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

#### Petition

On January 17, 1978, the Mine Safety and Health Administration (MSHA), (FOOTNOTE 1) through its attorney, filed a petition for assessment of civil penalties charging 20 alleged violations of the Act.

#### Answer

On January 31, 1978, Respondent filed a detailed response to the allegations and requested a hearing thereon.

#### Tribunal

A hearing was held in Knoxville, Tennessee, on February 14, 1979. Both MSHA and Shamrock Coal Company were represented by counsel (Tr. 3).

#### Evidence

The Judge held a prehearing conference before bringing the hearing to order and heard preliminary discussions bearing on the issues on the part of counsel for both parties.

The Judge, after hearing all evidence, studying the record, reviewing the exhibits, giving sympathetic regard to mitigating circumstances, and fully considering the criteria shown in section 109(a)(1) of the Act, made findings of fact, conclusions of law and issued an ORDER on the record, rendering his decision from the bench. Twenty violations were found as originally charged.

Findings of Fact and Conclusions of Law

The findings of fact, conclusions of law, and ORDER made on the record from the bench are hereby incorporated herein by reference and are AFFIRMED (Tr. 19-25).

Civil Penalties Assessed

Notice No.	Date	Standard 30 CFR	Penalty
7-0040	04/26/77	75.601-1	\$ 65
7-0046	05/02/77	75.1710	55
7-0047	05/02/77	75.1710	55
7-0048	05/02/77	75.1710	55
7-0051	05/02/77	75.516-2	70
7-0052	05/02/77	75.1103-1	65
7-0057	05/02/77	75.701	70
7-0058	05/02/77	75.1100-2(b)	100
7-0059	05/02/77	77.400	100
7-0065	05/05/77	75.1107-1(b)	65
7-0069	05/05/77	75.518	100
7-0070	05/05/77	75.1100-2(e)	65
7-0073	05/05/77	75.1106-3(c)	65
7-0074	05/05/77	75.1106-3(a)2	65
7-0075	05/05/77	75.601-1	25
7-0076	05/05/77	75.601	25
7-0077	05/05/77	75.517	50
7-0078	05/05/77	75.1105	65
7-0079	05/05/77	75.1102	95
7-0080	05/05/77	75.518	95
		Total	\$1,350

Disposition

The Judge was notified by letter from the Office of the Solicitor, U.S. Department of Labor, that the Respondent had submitted payment of

