FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, Suite 1000
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

March 6, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2000-356-M
Petitioner	:	A. C. No. 41-03959-05505
	:	
v.	:	
	:	
MATBON INCORPORATED,	:	
Respondent	:	Matbon Incorporated

DECISION

Appearances: Christopher V. Grier, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, on behalf of Petitioner;
Jean S. Boney, Matbon Incorporated, Dallas, Texas, on behalf of Respondent.

Before: Judge Melick

This case is before me upon the Petition for Civil Penalty filed by the Secretary of Labor pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994), the "Act," charging Matbon Incorporated (Matbon) with eighteen violations of mandatory standards and proposing civil penalties of $10,565.00 for those violations. The general issue before me is whether Matbon violated the cited standards as alleged and, if so, what is the appropriate civil penalty to be assessed considering the criteria under Section 110(i) of the Act.

At hearings, Respondent acknowledged the violations as charged and agreed with the Petitioner to a settlement to resolve these proceedings. The parties agreed that the amount of civil penalties would be based upon the disposition by the trial judge of two legal issues.[1] The

[1] In a letter accompanying its post-hearing brief Matbon sought to void the settlement agreement if it did not prevail on these issues. Matbon subsequently acknowledged in a supplemental post-hearing brief that the settlement agreement was enforceable but nevertheless asked the trial judge to exercise his discretion to allow Matbon to withdraw from the agreement - - presumably only if it does not prevail on the two legal issues submitted for decision. I find no basis to permit Matbon to now withdraw from the agreement. Not only is the agreement enforceable under Texas law but I note that Ms. Boney, Matbon's representative at hearings was specifically advised in the pre-trial conference that if she wished, even at that late date, to retain

issues relate to two of the six criteria under Section 110(i) of the Act used to determine an appropriate civil penalty, i.e. the operator's history of previous violations and the appropriateness of the penalty to the size of the operator's business.[2]

More particularly the first issue is whether a corporate mine operator may be held responsible for its history of violations regardless of its stock ownership. The history of this corporate operator includes violations committed during May 1998 and through September 1999. On October 22, 1999, Jean Boney purchased 51% of the outstanding stock of Matbon thereby taking controlling interest in the corporation.

As noted, under Section 110(i), in assessing civil penalties, consideration must be given to the the "operator's history of previous violations." The modern corporation is a creature of statute acquiring its existence and authority to act from the state. *Fletcher Cyc Corp.* § 2.10 (Perm Ed). There is no dispute that Matbon is a corporation under Texas law and has been, during relevant times, the operator of the subject mine. A corporation is one of the forms of association, having rights and relations, and the characteristic attributes of a legal entity distinct from that of the persons who compose it or act for it in exercising its functions *Id.* § 1. It is an artificial being, invisible, intangible and existing only in contemplation of law with an identity separate and distinct from that of its owners. *Horne Motors Inc., v. Latimer*, 148 S.W. 2d 1000. Thus, regardless of stock ownership, a corporate mine operator is an independent legal entity responsible for any history of violations committed by that corporate operator. Under the circumstances, the history of violations utilized by the Secretary in calculating the civil penalties proposed in the instant case dating back twenty-four months and including the period of time during which the corporation was under a different mix of stock ownership, was legally correct.

The second issue before me is whether the size of the mine operator may properly include the hours worked by all miners or must be limited to only the production miners working on Matbon's dredge. As noted, under Section 110(i), consideration must be given to the appropriateness of the penalty to "the size of the business of the operator charged." It is not

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counsel, the hearing would be postponed to enable her to do so. She declined to avail herself of this opportunity. Ms. Boney also acknowledged at the pre-trial conference that she was aware, by agreeing to the proposed settlement, that she was giving up certain defenses to the violations at issue.

[2] Under Section 110(i) of the Act, the Commission and its judges must consider the following criteria in assessing a civil penalty: 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 demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. For purposes of the settlement Respondent does not dispute the Secretary's findings set forth in the civil penalty petition and charging documents regarding the other four criteria under Section 110(i).

disputed that the size of an operator may properly be based on the number of miners employed and the hours worked at its mine. It is also undisputed that, during relevant times, Respondent had an average of two persons working on the extraction of mine product from a dredge, eleven persons working on the processing of this mine product at the same mine property and two persons working in the mine office on the same mine property.

Under Section 3(g) of the Act, "miner" is defined as "any individual working in a coal or other mine." Under Section 3(h)(1) of the Act, "coal or other mine" means: " (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities."

Within this framework of law it is clear that all fifteen employees working at the Matbon mine were "miners" within the meaning of the Act and all of their work hours must appropriately be considered in determining mine size.

Within the framework of the settlement agreement reached at hearing, in light of the findings herein and in consideration of the criteria under Section 110(i) of the Act, I find that a civil penalty of $7,395.50, is appropriate.

ORDER

Respondent Matbon Incorporated is directed to pay a civil penalty of $7,395.50, within 40 days of the date of this decision.

Gary Melick
Administrative Law Judge

Distribution: (Certified Mail)

Christopher V. Grier, Esq., Office of the Solicitor, U.S. Dept. of Labor, 525 Griffin Street, Suite 501, Dallas, TX 75202

Jean Boney, Secretary, Matbon Incorporated, 9535 Forest Lane, Suite 203, Dallas, TX 75243

Fredric Gover, Esq., Canterbury, Stuber, Elder, Gooch & Surratt, P.C., 5005 LBJ Freeway, Suite 1000, Dallas, TX 75244

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