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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. DENV 77-79-P  
A/O No. 05-02820-02004

v.

Maxwell Mine

C F & I STEEL CORPORATION,  
RESPONDENT

DECISION

Appearances: Leo J. McGinn, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner;  
Richard L. Fanyo, Esq., Welborn, Dufford, Cook  
& Brown, Denver, Colorado, for Respondent.

Before: Judge Moore

On August 17, 1977, the Mine Safety and Health Administration filed a petition for assessment of a civil penalty in accordance with section 109(a)(1) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 818(a). The above-stated petition was based on Notice of Violation No. 1 DLJ issued in April 21, 1977, alleging a violation of 30 CFR 75.316.

The 104(b) Notice No. 1 DLJ states: "The ventilation, methane and dust control plan was not being complied with. No. 1 unit turn out, left, where coal was being cut, mined and loaded, the end of the vent tube was 30 feet from the working face.

30 CFR 75.316 states:

A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form on or before June 28, 1970. The plan shall show the type and location of mechanical ventilation

equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every 6 months.

The respondent filed an answer to the petition on September 19, 1977, denying the alleged violation. A hearing on the merits was held in Pueblo, Colorado, on September 12, 1978. The Government introduced one witness, Donald Jordan, a Federal coal mine inspector and four exhibits. The respondent introduced two witnesses, Paul Montoya, an assistant mine foreman for C F & I Steel Corporation at the Maxwell Mine, and James Robert Morris, a mine superintendent for C F & I Steel Corporation. Respondent also introduced two exhibits, C F & I Exhibit Nos. 1 and 3 which are sketches of the relevant area of the Maxwell Mine cited in Notice No. 1 DLJ.

Petitioner and respondent presented two quite distinct depictions of the shape of the cut and the location of the blower tubing in the relevant area of the Maxwell Mine. The petitioner contends that the relevant cut was 30 feet in length, 18 feet wide, and that the mouth of the blower tubing was situated at the start of the cut approximately 30 feet from the face. Petitioner argues that respondent thus violated the ventilation plan which requires the blower tubing to be within 10 feet of the face (Tr. 7, 9).

The respondent, on the other hand, contends that the relevant cut was made at an angle and that while the lefthand side of the cut may have been 30 feet in length, the depth of the cut was only 10 feet. Respondent argues that the ventilation control plan (Govt. Exh. 2) only requires that 3,000 cfm of air be delivered within 10 feet of the point of deepest penetration rather than requiring the mouth of the blower tubing to be situated within 10 feet of the working face.

The relevant section of page 2 of the ventilation plan reads:

#### Ventilation and Dust Control

A minimum of 3,000 cfm of air will be delivered to within 10 feet of each face where coal is being cut, mined, or loaded. The device used will be flame-resistant line brattice or 18 or 24 inch flame-proof tubing and auxiliary ventilation fans. Where exhaust ventilation of the face is used the minimum mean entry velocity for dust and methane control will be determined after operation begins.

Respondent's Exhibit Nos. 1 and 3 are diagrams depicting the area of the alleged violation as respondent contends it to be. Government Exhibit No. 3 is a diagram of the cut and ventilation

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tubing as the Government contends it existed. None of the three diagrams are drawn-to-scale and that creates a problem. Because where angles are involved, nonscale drawings can be extremely deceptive. Two inspectors measured the lefthand edge of the cut by tying a weight to their measuring tape and throwing it into the cut. The respondent's foreman, Mr. Montoya, did not deny that the left-hand edge of the cut was in fact 30 feet long, and I will accept the measurement as a fact. If I also accept Mr. Montoya's estimate that the deepest penetration of the lefthand side of the cut was only 10 feet from the crosscut containing the ventilation tubing(FOOTNOTE 1) then a scale drawing would show an entirely different picture than that shown in Respondent's Exhibit Nos. 1 and 3. A scale drawing would approximate a right triangle with an altitude of 10 feet, a hypotenuse of 30 feet, and a base slightly in excess of 28 feet. The angle where the new cut first began would only be between 19 and 20 degrees. The new entry being started, would have a width in excess of 28 feet, whereas most entries and crosscuts in this mine were between 18 and 20 feet.

I might accept the fact that the inspectors in measuring the lefthand cut, which they thought to be perpendicular to the crosscut, were in error as to the angle by 10 or 20 degrees, but an error of 70 degrees is completely unreasonable. I reject Mr. Montoya's drawings and accept Government Exhibit No. 3, even though it is also not drawn-to-scale. I would like to point out, however, even if I accepted respondent's version as correct, there would still be a violation of the ventilation plan because that plan requires that line curtains or tubing "shall be maintained to within 10 feet from the area of deepest penetration to which any portion of the face has been advanced." (See page 8 of Govt. Exh. 2). Obviously, in referring to "tubing" the plan means the intake end of the tubing because it would do no good to have a central section of the tubing run past or within 10 feet of a face. And, according to Mr. Montoya's description of the scene, the intake end of the tubing was in the face of the crosscut and 30 feet from the deepest penetration of the entry that was to be driven.

I find that a violation occurred, that respondent was negligent, that a moderate degree of gravity was involved and that there was good faith abatement. The history of prior violations is substantial. While evidence as to the actual size of the company or the mine was not produced, the ventilation plan does show that 160 miners were employed in respondent's Maxwell Mine. It is not a small mine and in the absence of evidence to the contrary, I will assume that any penalty assessed will not affect its ability to continue in business. I find a civil penalty of \$800 to be appropriate.

ORDER

It is hereby ORDERED that respondent pay to MSHA a civil penalty in the amount of \$800 within 30 days of the entry of this decision.

Charles C. Moore, Jr.  
Administrative Law Judge

DDATE:

Issued: March 15, 1979

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~FOORNOTE\_ONE

a1. The terminology may be somewhat confusing because the crosscut had been driven first and the ventilation tube placed therein and the cut that was being made in the area of the violation was supposed to be the beginning of an entry.