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SOL (MSHA) V. AMHERST COAL  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

	Docket No.	Assessment Control No.
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	HOPE 78-315-P	46-01364-02004V
	HOPE 78-559-P	46-01364-02012V
	HOPE 78-560-P	46-01364-02013V
	HOPE 78-561-P	46-01364-02014V
	Amherst No. 4-H UG Mine	
v.		
AMHERST COAL COMPANY, RESPONDENT	HOPE 78-316-P	46-02848-02004V
	HOPE 78-317-P	46-02848-02005V
	Amherst No. 5 Mine	
Civil Penalty Proceeding	HOPE 78-415-P	46-1369-02010V
	MacGregor Preparation Plant	
	HOPE 78-562-P	46-01370-02022V
	HOPE 78-563-P	46-01370-02023V
	MacGregor No. 7 UG Mine	
	HOPE 78-564-P	46-04624-02007V
	MacGregor No. 9 Mine	
	HOPE 78-565-P	46-01367-02025V
	HOPE 78-566-P	46-01367-02026V
	Paragon Mine	

DECISION

Appearances: Edward H. Fitch IV, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner;  
Edward I. Eiland, Esq., Logan, West Virginia, for  
Respondent.

Before: Administrative Law Judge Steffey

Pursuant to written notice dated August 15, 1978, as amended  
October 13, 1978, a hearing in the above-entitled proceeding was  
held on October 17, 18, and 19, 1978, and December 8, 1978, in  
Charleston, West Virginia, under section 105(d) of the Federal  
Mine Safety and Health Act of 1977.

MSHA's Petitions for Assessment of Civil Penalty were filed on April 18, 1978, in Docket Nos. HOPE 78-315-P through HOPE 78-317-P and each of those Petitions seeks assessment of a civil penalty for one alleged violation of the mandatory health and safety standards. The Petition in Docket No. HOPE 78-415-P was filed on May 19, 1978, and seeks assessment of a civil penalty for one alleged violation. The remaining eight Petitions in Docket Nos. HOPE 78-559-P through HOPE 78-566-P were all filed on June 27, 1978, and seek assessment of a civil penalty for one alleged violation with the exception of the Petitions in Docket Nos. HOPE 78-562-P and HOPE 78-565-P which seek assessment of civil penalties for four and three violations, respectively.

#### Issues

The issues raised by the 12 Petitions for Assessment of Civil Penalty are whether 17 violations of the mandatory health and safety standards occurred and, if so, what monetary penalties should be assessed.

At the conclusion of the hearing on December 8, 1978, counsel for both petitioner and respondent stated that they would waive the opportunity for filing posthearing briefs (Tr. 628).

#### General Considerations

Section 110(i) of the Act provides that civil penalties shall be assessed after giving consideration to six criteria. Four of those six factors may usually be given a general evaluation, while the remaining two, namely, the gravity of the violation and whether the operator was negligent, should be considered specifically in reviewing the evidence introduced with respect to each violation. The criteria which may be given a general review will be evaluated first.

#### History of previous violations

Counsel for MSHA introduced as Exhibit G-2, a 130-page computer printout listing alleged violations for which respondent has previously paid civil penalties. Exhibit G-2 is arranged so that previous violations are listed under the specific mine where the alleged violations occurred. The 12 Petitions for Assessment of Civil Penalty pertain to five different mines and to one preparation plant. Additionally, although the 12 Petitions allege a total of 17 different violations of the mandatory health and safety standards, 11 of the alleged violations relate to repetitious violations of the same standard. The result is that the 17 alleged violations pertain to 10 different sections of the regulations. Of the 10 different sections, respondent has violated all but sections 75.1103-4 and 77.205 on at least one prior occasion.

I have consistently applied the criterion of history of previous violations by increasing a penalty otherwise assessable for a given violation under the other five criteria when there was evidence in the record to show that respondent had violated the same section of the regulations on a prior occasion. Therefore, when penalties are hereinafter assessed, I shall give specific consideration to the criterion of history of previous violations each time that a penalty is assessed and the penalty otherwise assessable will be increased to the extent that respondent's history of previous violations warrants an increase.

#### Appropriateness of penalty to size of operator's business

Exhibit G-1 was submitted by counsel for MSHA. That exhibit lists the mines which are under the control of respondent and the annual tonnage attributable to those mines. Counsel for respondent stated that the data shown in Exhibit G-1 were somewhat inaccurate and Exhibit G-1 was received in evidence subject to respondent's right to submit proposed corrections to that exhibit (Tr. 616). Those corrections were submitted on December 13, 1978, and counsel for MSHA has filed no objections to the corrections submitted by respondent. Therefore, I am accepting the proposed changes submitted by respondent as the correct tonnages produced by respondent for the years 1976 and 1977.

Respondent's administrative superintendent testified as to the daily production figures for nine of the 11 mines listed on Exhibit G-1, but one of those mines (Lundale No. 1) is no longer owned by respondent (Tr. 602). The remaining eight mines produced a total of 6,659 tons per day in 1977. (FOOTNOTE 1) The total annual production for all mines under respondent's control amounted to 1,638,312 tons in 1976 and 1,369,532 tons in 1977. Respondent has approximately 990 employees of whom 860 are union miners and 130 are management personnel (Tr. 603).

On the basis of the foregoing information, I find that respondent is a large operator and that any civil penalties which may hereinafter be assessed should be in an upper range of magnitude to the extent that they are determined by the criterion of the size of respondent's business.

Effect of penalties on operator's ability to continue in business

Counsel for respondent did not present any evidence at the hearing with respect to respondent's financial condition. In Buffalo Mining Co., 2 IBMA 226 (1973), and in Associated Drilling, Inc., 3 IBMA 164 (1974), the former Board of Mine Operations Appeals held that when a respondent fails to present any evidence concerning its financial condition, a judge may presume that payment of penalties would not cause respondent to discontinue in business. In the absence of any specific evidence to the contrary, I find that payment of penalties in the amounts hereinafter assessed will not cause respondent to discontinue in business.

Good faith effort to achieve rapid compliance

With respect to 12 of the 17 violations alleged in this proceeding, counsel for MSHA either stipulated to the operator's good faith effort to achieve rapid compliance or the inspectors testified that there was good faith compliance (Tr. 56; 83; 126; 161; 189; 263; 349; 375; 382; 517; and 617). As to the remaining five alleged violations, I find that the orders or notices of termination show that respondent made a good faith effort to achieve rapid compliance after receiving notification that the alleged violations existed (Exhs. G-13; G-20; G-41; G-43; and G-46). Therefore, when violations are hereinafter found to have occurred so that penalties have to be assessed, respondent will be given full credit for having demonstrated a good faith effort to achieve rapid compliance.

Consideration of Remaining Factors

As indicated above, two of the six criteria set forth in section 110(i) of the 1977 Act, that is, gravity of the violations and whether the operator was negligent, must be specifically considered in reviewing the evidence presented by MSHA and respondent with respect to each violation. When violations are hereinafter found to have occurred, findings as to gravity and negligence will be made and penalties will be assessed accordingly.

Docket No. HOPE 78-315-P (4-H UG Mine)

Notice No. 1 DTN (6-39) 11/30/76 75.400 (Exhibit G-3)

Findings. Section 75.400 requires that coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustibles be cleaned up and not be permitted to accumulate in active workings or on electric equipment. Respondent violated section 75.400 because loose coal, coal dust, and float coal dust had accumulated up to 14 inches deep along the 4 road conveyor belt entry beginning at the surface of the mine and extending inby for a

distance of 1,700 feet to the No. 63 road conveyor drive. Additionally, loose coal had been allowed to accumulate as high as a person's hips in piles of from 3 to 5 tons at approximately five locations where conveyor belt tailpieces had existed prior to movement of the belt conveyors to keep up with the advancement of the face areas (Exh. G-3; Tr. 37-42; 59-60). The accumulations were moderately serious because there were some places where coal accumulations had risen high enough to push the belt up off the bottom rollers so as to cause the belt to drag in the loose coal. The friction resulting from the belt dragging in coal might have produced enough heat to have caused a fire along the beltline. Although electric wires supplied power to the belt drives, the inspector saw no "active" ignition sources which made him think that there was any likelihood that an immediate fire would occur (Tr. 44-48). Respondent was negligent for allowing the accumulations to form along the 4 road conveyor belt because the superintendent of the 4-H Mine knew that the accumulations existed, but he said that he could not get the miners to shovel in that uncomfortably cold portion of the mine. The inspector said that the 4 road conveyor belt was so close to the outside of the mine that the coal which fell from the belt was frozen each day as it accumulated (Tr. 37; 41-46). Respondent was grossly negligent for failing to clean up the hip-deep accumulations which had been left each time the belt tailpiece was advanced to a new position into the mine (Tr. 36; 42).

Discussion. In the findings given above, I have indicated that the inspector's testimony was sufficiently detailed to support findings that coal accumulations existed along the 4 road conveyor belt and at the sites where belts had been advanced. Additionally, the inspector's notice of violation (Exhibit G-3) alleged that accumulations existed along the 63, 73, 73B, and 73C road conveyor belts for distances of 600, 1,900, 2,800, and 500 feet, respectively. The inspector, however, had no specific recollection as to the nature of the alleged accumulations except for those which have been found to have existed along the 4 road conveyor belt (Tr. 41). Although the inspector said that he would not have cited the accumulations along the other conveyor belts if they had not existed (Tr. 58), the former Board of Mine Operations Appeals held in Bishop Coal Co., 4 IBMA 52 (1975), that an inspector's statement to the effect that he had no doubt but that he had observed coal accumulations is not probative enough as to depth of the accumulations or the extent of the accumulations' combustibility to support a finding that the accumulations had occurred. Likewise, the Board held in Armco Steel Corp., 2 IBMA 359 (1973), that an inspector's statement that it was his unvarying practice to issue notices of violation when coal accumulations are deeper than 1-1/2 inches, was not evidence showing the actual depth of the accumulations cited and did not permit anyone to make a finding as to the existence of the accumulations or the seriousness of such accumulations. For the foregoing reasons, the evidence does not permit me to find that coal accumulations were proven to have existed along the 63, 73, 73B, and 73C road conveyor belts.

The inspector's testimony as to the accumulations along the 4 road conveyor belt and at the sites where the belt had been advanced was sufficiently detailed to prove that the accumulations existed under the former Board's holding in Old Ben Coal Co., 8 IBMA 98 (1977), because the evidence shows that those accumulations had existed long enough for the loose coal and coal dust beneath the conveyor belt to freeze over a period of days as layer after layer of loose coal fell from the belt. The mine superintendent was aware of the accumulations and stated that it was difficult to get the loose coal cleaned up because the miners were unwilling to work in the cold long enough to clean up the loose coal accumulations. Nevertheless, after the inspector's notice was issued, the superintendent was able to get all of the frozen coal removed from the 4 road conveyor belt entry. Therefore, the evidence shows that the loose coal accumulations had existed long enough to support a finding that the operator was aware of the accumulations and was permitting them to occur (Tr. 37-39; 46; 67). The evidence also supports a finding that the piles of loose coal which existed where tailpieces had been advanced had been left there over a long period. of time. Consequently, the operator was aware of those accumulations and was permitting them to occur (Tr. 42-43; 59-60).

Conclusions. The inspector's testimony fails to show that the coal accumulations constituted a serious hazard. The accumulations were not continuous from the surface of the mine to the tailpiece. Of the 1,700 feet of coal accumulations along the 4 road belt conveyor, about 1,200 feet were in a frozen condition which would have reduced their combustibility (Tr. 32). The inspector saw no active electrical ignition sources and did not seem to think that the places where the belt was "scooting in coal" were sources of friction which were hazardous (Tr. 44; 48-49).

On the other hand, there was a high degree of negligence in the operator's permitting the coal to accumulate along the 4 road conveyor belt and there was an even higher degree of negligence in respondent's failure to clean up around the tailpieces before the belts were advanced. Such isolated piles of coal did not create particularly hazardous accumulations from the standpoint of propagation of any fire or explosion that might have occurred, but the piles were left on each side of the belt as it was advanced and did create a lingering obstruction and potential hazard in the vicinity of the belt conveyors (Tr. 42). Considering that respondent is a large operator, that there was good faith compliance, that payment of penalties will not cause respondent to discontinue in business, that the violation was moderately serious, and that there was a high degree of negligence, a penalty of \$500 will be assessed for this violation of section 75.400.

Exhibit G-2 indicates that 14 prior violations of section 75.400 occurred at respondent's No. 4-H Mine from 1970 through May of 1976.

No violations occurred in either 1973 or 1974 and no more than two violations of section 75.400 occurred in any year except for 1972 when six violations occurred. Respondent should increase its efforts to have additional years in which no violations of section 75.400 occur. Nevertheless, respondent's apparent efforts to reduce the number of violations of section 75.400 at its No. 4-H Mine warrants only a small increase in the penalty otherwise assessable under the other five criteria. Therefore, the penalty of \$500 will be increased by \$50 to \$550 because of respondent's relatively favorable history of previous violations.

Docket No. HOPE 78-561-P (4-H UG Mine)

Order No. 1 JCH (7-8) 5/13/77 75.400 (Exhibit G-12)

Findings. Section 75.400 requires that coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustibles be cleaned up and not be permitted to accumulate in active workings or on electric equipment. Respondent violated section 75.400 because float coal dust was permitted to accumulate over previously rock-dusted areas along the No. 73-B belt conveyor entry and connecting crosscuts to a depth of from 0 to 1/8 of an inch beginning at the tail roller and extending outby to the conveyor belt drive for a distance of 2,800 feet. The majority of the float coal dust was on the mine floor on the nontraveled side of the belt conveyor and in the connecting entries where permanent stoppings had been constructed on each side of the belt entry (Tr. 113). The violation was only moderately serious because in some places the float coal dust was thin enough to have prevented the propagation of an explosion and if the entire entry had been as effectively rock dusted as it was in such places, the inspector would not have cited the operator for a violation of section 75.400. Respondent was extremely negligent for allowing the float coal dust to accumulate because the mine superintendent knew that the condition existed but had delayed having the float coal dust cleaned up and an additional layer of rock dust applied (Tr. 106). Power control wires were located at the belt head. While such wires constituted a possible ignition hazard, the inspector saw no specific ignition points because all the wires appeared to be in good condition (Tr. 104; 111).

Conclusions. The evidence supports a finding that respondent was aware of the float coal dust accumulations described in the inspector's order (Exh. G-12), but failed to have the float coal dust cleaned up before it was observed by the inspector. Therefore, the violation was proved within the holding of the Board in the Old Ben case, supra. In assessing a penalty, it must be borne in mind that the violation was only moderately serious because there were no known ignition sources and because the accumulations were not so continuous as to have propagated an explosion throughout the 2,800-foot



expanse of the belt conveyor entry. There was a high degree of negligence in that the mine superintendent was aware of the black condition developing in the 73-B belt conveyor entry, but failed to take action to ameliorate that condition until the inspector wrote Order No. 1 JCH. This accumulation, however, was more serious than the previous violation of section 75.400 because none of the accumulations in this instance were wet and frozen as was the case in the prior violation, and this violation involved an accumulation which extended for a distance of 2,800 feet as compared with the expanse of 1,700 feet involved in the prior violation. Therefore, a penalty of \$800 will be assessed for this violation of section 75.400.

Respondent's history of previous violations now includes the preceding violation of section 75.400 which occurred on November 30, 1976. That violation increased the number of violations of section 75.400 which occurred in 1976 to three violations. The data in Exhibit G-2 thus show that respondent's trend in violating section 75.400 has deteriorated from no violations in 1973 and 1974, to two violations in 1975 and three violations in 1976. The penalty of \$800 assessed for this violation should, therefore, be increased by \$150 to \$950 in order to impress on respondent the importance of augmenting its efforts to reduce the number of violations of section 75.400 which are occurring at the 4-H Mine.

Docket No. HOPE 78-560 (4-H UG Mine)

Order No. 1 DPC (7-35) 8/4/77 75.200 (Exhibit G-44)

Findings. Section 75.200 requires each operator of a coal mine to submit a roof-control plan suitable to the roof conditions and mining system of each coal mine. Respondent's roof-control plan provided that in the rehabilitation of roof-fall areas, respondent would install temporary supports as cleanup and roof-bolting operations advanced. Additionally, the roof-control plan specified that no operator of a machine would advance the controls of the machine beyond permanent roof support. Respondent violated both of the aforementioned provisions of its roof-control plan by having cleaned up a roof fall without having installed temporary supports and by having advanced the controls of a loading machine beyond permanent supports for a distance of from 3 to 7 feet (Tr. 425-430). The violation was very serious because rocks were still hanging in the cavity left by a fall of rock measuring approximately 6 feet in thickness. The violation was serious also because respondent's No. 4-H Mine has a generally poor roof condition (Tr. 431-432).

Respondent was extremely negligent in allowing the violation to occur because a strike was in progress at the time the violation was cited and five section foremen had done the cleaning up of the rock fall without using temporary supports. Additionally, the mine foreman was present in the vicinity at the time the inspector observed

~100

a section foreman removing a bolting machine from the fall area. The section foreman agreed that he had just finished installing four roof bolts in the fall area. At the time the roof bolts were installed, the inspector could find no timbers of a length which could have been used as temporary supports at the time the roof bolts were installed (Tr. 434). The inspector observed three headers about 20 feet in length lying along the rib in the fall area, but the height of the mine in the fall area was 11 feet and the 20-foot headers could not have been used as temporary supports (Tr. 428-429).

Discussion. The superintendent of the 4-H Mine testified on behalf of respondent with respect to Order No. 1 DPC. The superintendent introduced as Exhibit C a one-page drawing of the 207 Road Unit cited in Order No. 1 DPC (Tr. 470). The superintendent's description of the roof fall area is largely at variance with the inspector's description of the same area. Whereas the superintendent stated that the roof fall extended for a distance of about 100 feet, the inspector said that the roof fall extended for only 35 feet. Whereas the superintendent said that at least 45 feet of the roof fall area had been permanently bolted in accordance with the roof-control plan "as far as he could remember" (Tr. 474; 478), the inspector said that the entire roof fall area contained only four roof bolts which had been installed just a few minutes before the inspector observed the violation (Tr. 445; 451). Whereas the superintendent testified that the inspector made his measurements by standing in the belt entry where the roof fall had occurred, the inspector stated that he had never at any time entered the roof fall area and had made all his measurements by standing in a crosscut which opened into the belt entry where the roof fall had occurred (Tr. 449; 494). Whereas the superintendent said that the inspector had taken two measurements extending in an outby direction, the inspector stated that he stood in a crosscut and took one measurement of 20 feet to his left toward the face and took another measurement of 16 feet to his right away from the face (Tr. 427; 440; 442; 471; 486).

Although a comparison of the superintendent's testimony with the inspector's testimony shows many variances, the superintendent did not really dispute the essential points made by the inspector. The superintendent did not contest the fact that a large part of the roof fall area was still unsupported and he did not claim that the inspector had made any mistakes in measuring the distance between the last permanent roof support and the fallen materials which still had to be cleaned up (Tr. 478; 487-488). The superintendent did not contest the fact that the distance from the controls on the loading machine to the end of the machine was 13 feet (Tr. 474). Since the superintendent did not doubt that there was a distance of from 20 to 16 feet from the last permanent support to the remaining materials which had to be cleaned up, there is nothing in the record to rebut the inspector's claim that the operator of the loading machine would have had to

~101

have gone from 3 to 7 feet beyond permanent support in order to have cleaned in an area measuring from 16 to 20 feet with a loader which measured only 13 feet from the controls to the front of the machine (Tr. 426).

The superintendent did not see but one temporary support in the entire area where the roof fall was being cleaned up (Tr. 483). It is certain that one temporary support could not have brought respondent's section foremen into compliance with the roof-control plan because there is no way that one temporary support could be considered as adequate for roof bolting in an unsupported area which measured from 13 to 20 feet in length and was 20 feet wide (Exhs. G-49 and C).

Conclusions. The foregoing discussion shows that there was a high degree of negligence involved in respondent's violation of its roof-control plan. Because of a strike at the 4-H Mine, five of respondent's section foremen had done the cleaning up of the roof materials left in the belt entry by the roof fall. At the time the inspector's order was written, the mine foreman was near the site of the roof fall and would have had to have known, or if he had exercised due diligence, the mine foreman should have known that the section foremen were exposing themselves to possible injury or death by working beyond the last permanent support and by failing to erect temporary supports before installing roof bolts. The negligence was especially great because the six men who were ignoring the safety provisions of the roof-control plan were all trained in principles of proper roof control and were obligated to know the provisions of respondent's roof-control plan. In such circumstances, a penalty of \$4,000 is warranted. Far too many miners continue to be killed and injured by roof falls to permit violations of the roof-control plan to be taken lightly.

Exhibit G-2 shows that 33 prior violations of section 75.200 have occurred at Respondent's 4-H Mine. Twelve of those violations occurred in 1971. Four violations of section 75.200 occurred at the 4-H Mine in 1976. Two had occurred in 1977 prior to the one in August here under consideration. Since reduction in the number of roof-control violations is essential for promotion of safety, I believe that respondent should augment its efforts to reduce the number of violations of section 75.200 which have occurred at the 4-H Mine. Therefore, the penalty of \$4,000 will be increased by \$400 to \$4,400 because of respondent's unfavorable history of previous violations.

Docket No. HOPE 78-559-P (4-H UG Mine)

Notice No. 1 JCH (7-7) 5/13/77 75.1103-4 (Exhibit G-10)

Findings. Section 75.1103-4 requires that automatic fire sensors be able to provide identification of a fire within each belt

~102

flight. Respondent violated section 75.1103-4 because the automatic fire sensor system for the 4-H Mine was disconnected at the master control box. When the sensor system was reconnected, it was inoperative and would not identify any of the seven (FOOTNOTE 2) belt flights which were being operated at the 4-H Mine. The violation was moderately serious because miners were stationed at each belt head to give warnings if a fire should occur and firefighting materials and equipment existed along the belt conveyors. Nevertheless, a sensing system which is working properly will identify the location of a fire and improve the probability of early extinguishment of a fire if one occurs. Respondent was grossly negligent for disconnecting the sensors and for failing to obtain expert assistance for repair of the system until it became the subject of a notice of violation (Tr. 73-77; 91; 94; 97).

Discussion. The inspector was very critical of respondent's management for allowing the fire sensing system to be disconnected because there was an indicator on the monitoring system near the mine office which showed when the system was inoperative. Therefore, the inspector said that management either knew the system was not working or should have known about it (Tr. 74-75). Respondent's chief electrician testified that when the system was first installed, it operated on only one main line. At a later time, a branch line was installed. The system worked for a short time after the branch line was installed, but then began to show only 7,500 ohms at the box on the outside of the mine, whereas a reading of 15,000 ohms was needed to make the system work properly. The chief electrician had been trying to get the system to operate for about 4 days before the notice of violation was issued. He estimated that he had spent about a fourth of his time during those 4 days working on the sensors. After the notice was issued, the chief electrician asked respondent's electrical engineer for advice and the electrical engineer explained to him that he would have to set the end-line resistors at 30,000 ohms in order to obtain a reading of 15,000 ohms on the outside of the mine. The increase to 30,000 ohms was required because of the addition of the branch line to the system (Tr. 91-96).

The chief electrician had not asked for assistance from respondent's electrical engineer until after the notice of violation was

~103

issued. The chief electrician said that he did not think that any special precautions needed to be taken while the sensors were inoperative because there was a man stationed at each belt head and because there was firefighting equipment along the beltlines such as water deluge systems and a waterline with outlets for attaching fire hoses at 300-foot intervals (Tr. 93-94; 97-98).

Conclusions. If the miners are given early warning of the existence of a fire, they are likely to be able to put it out before anyone is injured. Even though respondent did have men stationed at each belt head, there was a distance of from 500 to 2,800 feet between the belt heads (Exh. G-3). Therefore, it would be possible for a fire to start on a belt flight at a point which would be beyond the range of the vision of the miners who were stationed at the belt heads. Because of the firefighting aids which existed along the belt, the violation was only moderately serious, but there was a high degree of negligence in the chief electrician's failure to seek the assistance of respondent's electrical engineer until after the notice of violation was issued. All that was required to make the sensors work was to readjust the end-line resistors. Therefore, in assessing a penalty, I am primarily trying to translate into monetary terms an amount which will be sufficient to cause respondent to impress on its supervisors the need to make an early effort to correct safety violations as soon as they can possibly be corrected by reliance upon all the technical assistance which is available to the supervisors charged with compliance with the safety standards. For the foregoing reason, I believe that a penalty of \$1,000 should be assessed for this violation of section 75.1103-4.

Exhibit G-2 does not show that there has been a previous violation of section 75.1103-4 at respondent's 4-H Mine. Consequently, there is no history of previous violations to be considered in this instance.

Docket No. HOPE 78-316-P (No. 5 Mine)

Order No. 1 RAN (6-77) 11/30/76 75.302-1 (Exhibit G-30)

Findings. Section 75.302-1 requires that the line brattice be installed at a distance of no more than 10 feet from the area of deepest penetration when coal is being cut, mined, or loaded. Respondent violated section 75.302-1 because coal was being cut, mined, or loaded in the Nos. 1, 2, and 3 rooms in the 34 Road Section while the brattice curtains were 30, 35, and 30 feet, respectively, from the working faces. The violation was serious because the curtains have to be close to the working face in order to assure that respirable dust and noxious fumes will be carried away from the miners who are working at the faces. Respondent was grossly negligent because the preshift examiner had reported the line brattices' excessive distances from the faces, but the section foreman had started production of coal on the day shift without moving the brattice curtains to

~104

their proper location which would have been within 10 feet of the working faces (Tr. 378-385).

Conclusions. Respondent presented no evidence showing any mitigating circumstances in connection with this violation of section 75.302-1. The inspector stated that the men would have had to work for more than one shift without moving the curtains for the curtains to be from 30 to 35 feet from the working faces. While the inspector stated that no methane has ever been detected in respondent's No. 5 Mine, the inspector noted that the No. 5 Mine is above other mines in which methane has been detected and he said that it was possible that methane could seep up to the No. 5 Mine from the mines beneath it. Therefore, he was unwilling to eliminate the possibility that the line curtains would need to be within 10 feet of the faces in order to protect the men from a possible hazardous concentration of methane (Tr. 381). The section foreman was especially negligent in failing to have corrected the placement of the line brattices when it is considered that the preshift examiner had reported the improper placement of the curtains when he made his preshift report (Tr. 382). In view of the fact that the violation was serious and that there was a high degree of negligence, a penalty of \$2,000 will be assessed for this violation of section 75.302-1.

Exhibit G-2 shows that six violations of section 75.302-1 have occurred in respondent's No. 5 Mine since 1973. There has been one violation of section 75.302-1 in each year except for 1974 when three violations occurred. Some consideration should be given to the criterion of history of previous violations in assessing penalties as I believe that respondent should be able to mine coal without violating section 75.302-1 at all. Therefore, the penalty of \$2,000 will be increased by \$25 to \$2,025 because of respondent's history of previous violations.

Docket No. HOPE 78-317-P (No. 5 Mine)

Notice No. 1 RAN (6-76) 11/30/76 75.402 (Exhibit G-28)

Findings. Section 75.402 requires that all underground areas of a coal mine be rock dusted to within 40 feet of all working faces unless such areas are too wet or too high in incombustible content to propagate an explosion or unless such areas are inaccessible or unsafe to enter or the Secretary has ruled that a given mine is to be excepted from the need to apply rock dust. Additionally, section 75.402 requires that rock dust be applied in all crosscuts which are less than 40 feet from the working face.

Respondent violated section 75.402 because no rock dust had been applied in the Nos. 1, 2 and 6 rooms in the 34 Road Section for distances of 50, 60, and 50 feet, respectively, from the working faces and no rock dust had been applied in the crosscut between Nos. 1 and

~105

2 entries or the crosscut between Nos. 2 and 3 entries. Since the inspectors' distances of 50, 60, and 50 feet included the 40-foot distances in entries which did not have to be rock dusted, the violation really pertained to distances of 10, 20, and 10 feet, respectively, in the Nos. 1, 2 and 6 rooms, but the inspector testified that each crosscut was 70 feet in length so the unrock-dusted area consisted of 140 feet of crosscuts and 45 feet of entries. The violation was serious because no rock dust at all had been applied in the entries and crosscuts cited in the inspector's notice and production was in progress so that a mine fire or an explosion could have occurred. Respondent was grossly negligent in continuing to produce coal without applying rock dust in the crosscuts or within 40 feet of the working faces. The inspector testified that none of the exceptions in section 75.402 for rock dusting were applicable, that is, the areas were not so wet or incombustible that rock dusting was unnecessary, the areas were not inaccessible or unsafe to enter, and the Secretary had not excepted the No. 5 Mine from the rock-dusting requirements of section 75.402 (Tr. 372-376; 385).

Conclusions. The only excuse offered by the section foreman for his failure to rock dust was that he had ordered rock dust, but it had not been sent into the mine yet (Tr. 373). Despite the claim that rock dust could not be obtained, the violation was corrected within 1 hour and 10 minutes after the inspector issued Notice No. 1 RAN (Exh. G-29). It would appear that this was a case in which the section foreman simply concluded that production was more important than complying with the safety standards. The inspector testified that the working place looked black everywhere and that he did not think the place should have been allowed to get in such a dangerous condition (Tr. 376). Since the violation was both serious and there was a high degree of negligence, a penalty of \$2,000 will be assessed for this violation of section 75.402.

Exhibit G-2 shows that one violation of section 75.402 occurred in respondent's No. 5 Mine in 1974. No prior violations of section 75.402 have occurred since 1974. In such circumstances, I find that the penalty in this instance should not be increased at all under the criterion of history of previous violations.

Docket No. HOPE 78-415-P (MacGregor Preparation Plant)

Notice No. 1 NK (7-5) 4/7/77 77.205(a) (Exhibit G-26)

Findings. Section 77.205(a) requires that respondent provide and maintain a safe means of access to all working places. The inspector alleged in Notice No. 1 NK that respondent had erected work platforms on the outside of two coal-drying cyclones and that respondent had violated section 77.205(a) by failing to provide a safe means of access to the work platforms because "the employees were required to walk the structure beams which were only approximately 10 inches wide

and open to all sides and located approximately 30 feet above the lower floor" (Exh. G-26). No men were working on the outside of the cyclones when the inspector made his examination. The inspector did not see any men walk on the beams to gain access to the work platforms and the inspector did not talk to any men who had walked on the beams (Tr. 262-263).

Although the inspector made his examination of the cyclones because of a complaint received from the UMWA, the complaint stated that "the work area on the flash dryers had an old wooden walkway with no guard rails. The men are being requested to work in this very dangerous area" (Exh. G-24). The inspector also wrote Order No. 1 NK citing respondent for failure to provide a safe working platform. That order is not a part of the violations alleged by MSHA in any of the 12 Petitions for Assessment of Civil Penalty which are involved in this proceeding. Therefore, when the inspector wrote Notice No. 1 NK which is here involved, he was citing respondent for a violation which was not a part of the UMWA's written complaint. The evidence presented by respondent shows that respondent had erected a ladder between the cyclones. The means of access provided by respondent was for workers to climb the ladder to the top of the cyclones. After stepping onto the top of the cyclones from the ladder which was equipped with backguards, the workers lowered themselves onto the work platforms by using safety ropes and belts (Tr. 273; 308).

The inspector wrote Notice No. 1 NK on the incorrect assumption that the only means of access to the work platforms was by walking on the steel beams (Tr. 255-259). The inspector had not heard of the ladder and safety ropes used for gaining access to the platforms until respondent presented its evidence at the hearing. The inspector did not thereafter offer any rebuttal testimony to show whether or not he believed that the use of the ladder and safety ropes was an unsafe means of gaining access to the work platforms. It is true that counsel for MSHA diligently tried to show on cross-examination that it was unsafe to use the ladder and safety ropes to gain access to the platforms, but there is no evidence in the record to show that if the inspector had actually known the means of access provided by respondent that he would have cited the use of the ladder and safety ropes as a violation of section 77.205(a). Moreover, even if the inspector had testified at the hearing that use of the ladder and ropes was a violation of section 77.205(a), that would have been an entirely different violation of section 77.205(a) from the violation cited in the inspector's notice.

The difficulty in finding a violation of section 77.205(a) on the basis of the evidence is that MSHA has alleged that walking on steel beams to gain access to the work platforms was a violation of section 77.205(a), but that was not the means of access provided by respondent and the cross-examination conducted by MSHA's counsel did



~107

not result in any admissions by either of respondent's witnesses that use of the ladder and safety ropes was an unsafe means of gaining access to the work platforms (Tr. 284; 293; 297; 311-319). Therefore, the evidence simply will not support a finding that a violation of section 77.205(a) occurred.

Discussion. Respondent's foreman at the MacGregor Cleaning Plant testified that there were two coal-drying cyclones at the plant. The foreman said that about once a year it was necessary to weld steel patches on the outside of the cyclones and that work platforms had been constructed on the outside of the cyclones so that welders could stand on the platforms for the purpose of welding the patches onto the sides of the cyclones. The foreman said that respondent had constructed a ladder between the two cyclones and that respondent intended for the employees who worked on the platforms to gain access to them by going up the ladder to the top of the cyclones and letting themselves down to the platforms by use of safety ropes and belts (Tr. 270-273).

The foreman stated that respondent had received complaints from the men about the safety of the work platforms and that before the notice of violation here involved was written, respondent had contracted with the Daniels Company of Bluefield, West Virginia, to have additional walkways and stairways constructed to improve the safety of the men who had to work on the cyclones (Tr. 274-278). The foreman said that he was not aware that employees were walking on the steel beams in order to gain access to the work platforms. The foreman stated that the miners' primary complaint was failure of respondent to have handrails on the work platforms (Tr. 274-294).

A tipple mechanic testified that he had worked for the construction company which originally built the preparation plant for respondent in 1951 (Tr. 271; 307). Thereafter, he began to work for respondent and he has been a tipple mechanic at the plant for about 20 years (Tr. 306). The tipple mechanic stated that he generally gained access to the work platforms by climbing the ladder between the cyclones and letting himself down with safety ropes from the top of the cyclones. While the tipple mechanic said that he had walked the steel beams to gain access to the work platforms, he said that he was not required to use the beams for that purpose and that he used the ladder between the cyclones most of the time (Tr. 305-309; 321).

Conclusions. I have considered finding that respondent violated section 77.205(a) by ruling that respondent was obligated to know how its workers were at times gaining access to the work platforms, but the inspector stated that work on the cyclones was done on the maintenance shift which is worked from midnight to 8 a.m. (Tr. 262). The plant foreman worked on the day shift and would have had no way of knowing that any of the workers were gaining access to the platforms at times by walking on the steel beams instead of using the ladder and safety ropes provided by respondent as a safe means of access to

~108

the work platforms. I have also considered holding that respondent was obligated to warn the men that they were not supposed to walk on the steel beams to get to the platforms and that respondent should have warned its employees that it would take disciplinary action against any worker who did walk on the beams. The difficulty with making such rulings is that there is not a scintilla of evidence in the record to show that respondent's management had ever heard from any source that the workers were walking on the steel beams. The plant foreman stated that no workers at union safety meetings or at any other time had ever complained to him about having to walk on the steel beams. He said the safety complaints related to the way the work platforms were constructed and that there was no mention at any time about the fact that the men lacked a safe means of gaining access to the work platforms (Tr. 286; 291-292; 294; 299).

The evidence shows that after the notice and order discussed above were issued, respondent installed an elaborate system of stairways and platforms around the cyclones (Tr. 266). Although the tipple mechanic stated that he did not feel unsafe in working on the tipple before the new facilities were installed, he would agree that he feels safer now than he did before the new facilities were constructed and that the ease of making repairs has been enhanced by the new permanent work platforms (Tr. 319). Respondent has paid civil penalties for other violations cited by the inspector in connection with the repair of the cyclones. Those penalties were paid in connection with the unsafe conditions which were the subject of UMWA's written complaint (Tr. 323-328). Consequently, I believe that the purposes of the Act in bringing about safe working conditions at the cyclones have already been fully served. In any event, the evidence adduced in this proceeding does not support a finding that respondent violated section 77.205(a). Therefore, MSHA's Petition for Assessment of Civil Penalty filed in Docket No. HOPE 78-415-P will hereinafter be dismissed.

Docket No. HOPE 78-562-P (MacGregor No. 7 UG Mine)

Order No. 1 SWG (7-88) 11/4/77 75.400 (Exhibit G-50)

Foreword. After the parties had presented evidence in this proceeding for 3 days, it became necessary to continue the hearing to December 8, 1978, because of the unavailability of one of MSHA's witnesses. When the hearing was reconvened on December 8, some of the witnesses were again unavailable because heavy rains which fell on the day and evening preceding December 8 had flooded some of the roads and made it impossible for some of the witnesses to attend the hearing. Therefore, counsel for MSHA and respondent agreed that they would submit the issues with respect to two of the violations alleged in Docket No. HOPE 78-562-P on the basis of a stipulation of the facts (Tr. 605; 610-611).

Findings. Section 75.400 requires that coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustibles be cleaned up and not be permitted to accumulate in active workings or on electric equipment. Respondent violated section 75.400 because loose coal and coal dust in depths of from 2 to 10 inches had been permitted to accumulate under or along the Nos. 20, 314, and 344 belt conveyor flights. Additionally, float coal dust had accumulated under and along the Nos. 20, 314, and 344 belt conveyors and into the adjacent crosscuts to the left and right of the belt conveyors. The accumulations were continuous for the entire distance of the belt flights whose total length was 2,220 feet. The accumulations ranged from 6 to 8 feet in width. There is no evidence to show that any ignition sources were present, but the continuous nature of the accumulations in conjunction with the continuous coating of float coal dust warrants a finding that the violation was serious. Respondent was grossly negligent for permitting such a large expanse of combustible materials to accumulate (Tr. 617-618; Exh. G-50).

Conclusions. Although there is no testimony to show that the violation was proven under the strict standards of proof enunciated by the former Board of Mine Operations Appeals in Old Ben Coal Co., 8 IBMA 98 (1977), I believe that the exhibits and stipulations support a finding that the accumulations had existed for a sufficient period of time that respondent, by exercise of due diligence, should have discovered the accumulations before they were cited by the inspector in Order No. 1 SWG. That conclusion is supported by the exhibits. Order No. 1 SWG was written on a Friday at 2:23 p.m. Assuming that no cleanup work was done on either Saturday or Sunday at the mine, 3 working days in the following week were required to clean up the accumulations and apply an ample coating of rock dust in the areas cited in the inspector's order (Exhs. G-50 and G-51). I conclude that accumulations which required 3 days for cleanup would have had to have accumulated over a time period during which respondent should have been aware of them so as to have taken action to clean them up before they were cited by the inspector. Counsel for respondent stated that the accumulations described in the inspector's order were not a condition which was condoned or approved of by respondent's management (Tr. 612).

Considering that the instant violation of section 75.400 was serious and involved a high degree of negligence, a penalty of \$2,000 will be assessed for this violation.

Exhibit G-2 shows that 58 prior violations of section 75.400 have occurred at respondent's No. 7 Mine. The number of violations ranged from two to five per year from 1970 to 1975. In 1976 there were 29 violations and in 1977 there were eight violations of section 75.400 prior to the one here under consideration. The evidence shows

~110

that respondent made a commendable reduction in the number of violations between 1976 and 1977, but I consider that occurrence of eight violations in 1977 is still an unwarranted number of violations of section 75.400. Therefore, the penalty of \$2,000 will be increased by \$500 to \$2,500 because of respondent's unfavorable history of previous violations at its No. 7 Mine.

Docket No. HOPE 78-562-P (MacGregor No. 7 UG Mine)

Order No. 1 SWG (7-102) 11/9/77 75.514 (Exhibit G-54)

Foreword. The facts concerning Order No. 1 SWG dated November 9, 1977, were stipulated by counsel for MSHA and respondent for the same reasons stated above under my discussion of Order No. 1 SWG dated November 4, 1977.

Findings. Section 75.514 provides that all electrical connections or splices in conductors shall be mechanically and electrically efficient and that suitable connectors shall be used. The section also requires that electrical connections or splices in insulated wires be reinsulated at least to the same degree of protection as the remainder of the wire. Respondent violated section 75.514 because of the existence of the facts hereinafter given.

The end of the trailing cable of a three-fourths horsepower pump had been stripped of all insulation to expose both conductors for a distance of about 1 inch and the ground conductor had been cut out of the cable. Each of the bare conductors had been wound about a separate nail. The end of the pump's trailing cable with the nails attached to the bare conductors, as described above, was found by the inspector at a point along a trailing cable to a Joy 21 shuttle car. There were two holes in the shuttle car's cable which were far enough from each other to match the distance between the two nails in the pump's trailing cable. The existence of the bare conductors and nails in proximity to the holes in the shuttle car's trailing cable supports a finding, and I so find, that the nails had been driven into the shuttle car's cable for the purpose of obtaining electricity to power the pump (Tr. 618-620; 625-628; Exhs. G-54 and G-58).

Such a crude connection was not mechanically or electrically efficient; suitable connectors were not used; and no attempt at reinsulation of either trailing cable had been made. The violation was very serious because the bare conductors would have exposed to electrocution any person who might have touched the bare conductors and nails while they were being used to power the pump. There was also a strong likelihood that sparks could come from the bare conductors so as to cause a fire or explosion. The nail holes left in the shuttle car's trailing cable would have continued to be an electrocution hazard if they had not been discovered by the inspector so that the holes in the cable could be reinsulated to the same degree of protection as the remainder of the trailing cable.

~111

Conclusions. Since the violation was very serious and there was an extremely high degree of negligence, a penalty of \$6,000 will be assessed for this violation of section 75.514. Exhibit G-2 shows that 10 prior violations of section 75.514 have occurred at respondent's No. 7 Mine. The largest number of violations of section 75.514 occurred in 1976 when five were cited by inspectors. It is encouraging to note that only one violation of section 75.514 had occurred in 1977 prior to the instant violation, but there is no reason for violations of section 75.514 to occur if respondent's electricians are properly trained and supervised. Therefore, the penalty of \$6,000 will be increased by \$50 to \$6,050 under the criterion of history of previous violations.

Docket No. HOPE 78-562-P (MacGregor No. 7 UG Mine)

Order No. 1 RJW (7-103) 11/11/77 75.518 (Exhibit G-40)

Findings. Section 75.518 requires the use of automatic circuitbreaking devices or fuses to protect all electric equipment against short circuit and overloads. Respondent violated section 75.518 because two 60-amp fuses in the switch box for a pump motor had been blown and wire had been used to bridge over the fuses so that the pump would continue to run. Bridging over the fuses eliminated short circuit and overload protection for the pump. The violation was moderately serious because, at the time the violation occurred, a malfunction in respondent's ventilating system had caused intake air to come out of the mine instead of going into the section of the mine here involved. Therefore, if the pump motor had become overheated from lack of short circuit and overload protection, any smoke from the pump motor would have been carried out of the mine instead of going into the mine so as to endanger any miners who might have been working in by the pump. Respondent was grossly negligent for deliberately destroying the pump motor's short circuit and overload protection (Tr. 544-549; 555; 575-579).

Discussion, Respondent's second-shift maintenance foreman testified that the pump was receiving power through a nip attached to a trolley wire. The maintenance foreman said that there was a fuse in the nip and that the fuse in the nip would have continued to provide the pump motor with short circuit and overload protection (Tr. 563-564). The inspector presented rebuttal testimony in which he stated that when he wrote his order citing the bridging over of the two fuses in the switch box, he specifically noted that there was no fuse in the nip. The inspector said that when the maintenance foreman replaced the fuses at the switch box, he also replaced the nip with one which had a fuse in it (Tr. 585). I am accepting the inspector's version that there was no fuse in the nip because respondent's maintenance foreman stated that there was a fuse in the nip the last time he inspected it, but that he did not inspect the nip on the day the inspector's order was written (Tr. 566). Therefore, I have found

~112

above that the bridging over of the fuses in the switch box had the effect of destroying short circuit and overload protection for the pump because I find that no fuse existed in the nip attached to the trolley wire.

Another discrepancy between the inspector's testimony and that of the maintenance foreman is that the foreman claimed that the motor on the pump was a 10-horsepower motor instead of a 5-horsepower motor as reported by the inspector (Tr. 560; 585). I find that it is unnecessary to determine which witness was right about the size of the pump motor since the inspector said that either a 10-horsepower or a 5-horsepower motor would have had adequate protection if 60-amp fuses had been used (Tr. 586). The inspector agreed that the mine superintendent's testimony about the fact that intake air was actually coming out of the section instead of going in could be correct (Tr. 584). For that reason, I have found above that the violation was moderately serious because any smoke which might have come from the motor if an overload had occurred would have been unlikely to go toward the working face so as to create a hazard for the miners who are working in by the pump cited in the inspector's order.

Conclusions. A large penalty is not warranted under the criterion of gravity, but I have always considered the deliberate act of bridging over fuses to be an act of extreme and intentional negligence. (FOOTNOTE 3) Therefore, a penalty of \$1,000 will be assessed for this violation of section 75.518. Exhibit G-2 shows that 14 previous violations of section 75.518 have occurred at respondent's No. 7 Mine. The number of violations ranged from two to three in 1971, 1972, and 1974, but there were seven violations of section 75.518 at the No. 7 Mine in 1976. That is a sharp increase in failure to provide proper short circuit and overload protection justifying an increase of \$500 under the criterion of history of previous violations. Therefore, the penalty of \$1,000 will be increased by \$500 to \$1,500 because of respondent's unfavorable history of previous violations.

Docket No. HOPE 78-562-P (MacGregor No. 7 UG Mine)

Order No. 2 RJW (7-104) 11/11/77 75.518 (Exhibit G-42)

Findings. Respondent violated section 75.518 a second time on November 11, 1977, by bridging over two 10-amp fuses for a three-fourths-horsepower pump. The second pump was located about 60 to 80 feet inby the pump which was discussed above in connection with Order No. 1 RJW. The seriousness of the violation is moderate because intake air was traveling in the wrong direction at the time the violation occurred so that any smoke that might have come from an overloaded motor would have come out of the mine and would not have created any hazard for the miners working inby the pump. There was an extremely high degree of negligence because the two fuses in the switch box as well as a fuse in the nip at the trolley wire had all been bridged over with copper wire (Tr. 588-591).

Discussion. The testimony given by the second-shift maintenance foreman indicated that he could not be certain whether he replaced the nip before or after the inspector's Order No. 2 RJW was issued because he said that the motor crew tears out the nips with considerable regularity (Tr. 593). The maintenance foreman could not understand why anyone would have bridged over the fuses with wire because he said there were plenty of fuses at the mine to replace any that might be blown (Tr. 594).

Conclusion. Since the testimony is almost identical for the second violation of section 75.518 as it was with respect to the first violation, I conclude that a penalty of \$1,000 should also be assessed for this second violation of section 75.518. There is no difference in respondent's history of previous violations because the first and second violations were cited on the same day by the same inspector within a period of 15 minutes. There would not have been time between the citing of the two violations for respondent to have instituted an improved program for inspection of electrical equipment. In such circumstances, the penalty of \$1,000 will be increased by \$500 to \$1,500 because of respondent's unfavorable history of previous violations of section 75.518 at the No. 7 Mine.

Docket No. HOPE 78-563-P (MacGregor No. 7 UG Mine)

Notice No. 3 OEB (7-13) 9/16/77 75.604 (Exhibit G-37)

Findings. Section 75.604 requires that permanent splices be mechanically strong and effectively insulated and sealed so that the splices will exclude moisture. The splices are also required by that section to be made of suitable materials which will provide flame-resistant qualities and good bonding to the outer jacket. Respondent violated section 75.604 because there were five defective permanent splices on the trailing cable to the No. 86 shuttle car operating in

~114

the No. 373 Section. The five splices had been rubbed and frayed to the extent that at least one electrical conductor was showing for a distance of from one-fourth to three-fourths of an inch in each splice. The five splices began at a point about 60 feet outby the shuttle car and were all located within an additional 40 feet of the cable so that all of the defective splices were located within 100 feet of the shuttle car. The violation was very serious because anyone who might have had reason to pick up the trailing cable could have been electrocuted if he had touched any part of the bare conductors. Respondent was grossly negligent for allowing the five splices to deteriorate so as to expose the conductors. Respondent should have discovered the defective splices and should have repaired them before they deteriorated to the hazardous condition described in the notice (Tr. 511-516).

Discussion. Respondent's witness testified that there was a wildcat strike at the No. 7 Mine which began on June 21, 1977, and ended on September 7, 1977. No weekly inspections of electrical equipment were made during the strike and the first inspection made after the strike was on September 16, 1977, which was the same day that the instant notice of violation was written. Additionally, respondent's witness stated that the five permanent splices cited in the notice were not in as bad a condition as the inspector claimed because he could see bare conductors at the ends of three of the splices only by lifting up on the ends of the sleeves on those three permanent splices. Respondent's witness agreed with the inspector that two permanent splices had holes in the middle about the size of a match stem, but he said that the conductors in those two splices were still covered by their individual wrappings so that no bare conductors were exposed (Tr. 527-530).

Respondent's witness also testified that 2 days after they had replaced the permanent splices cited in the inspector's notice, they examined the new splices and found that the same conditions cited in the inspector's notice again existed. They then discovered that the cable guide was too small for the standard-sized trailing cable being used on the shuttle car. The guide was large enough to accommodate the trailing cable until such time as permanent splices were made in it. The splices, however, were so large that the guide squeezed them and caused them to wear out very fast. The excessive wear in the splices stopped when the cable guide was replaced with a guide large enough to permit permanent splices to pass through it (Tr. 531-532).

Respondent's defense is not persuasive. Respondent's witness stated that it would not be normal for five permanent splices to be made in a single trailing cable within a time period of 12 weeks (Tr. 540). Since the five permanent splices again wore out within 2 days after they were replaced following the writing of the inspector's notice (Tr. 531), there is reason to conclude that respondent should have discovered the worn condition of the splices over the period of



~115

several weeks during which the five permanent splices would originally have been made. In other words, it is highly improbable that five permanent splices were made in the cable during a single day. Since all the splices were within 40 feet of each other, the electricians who installed the second, third, fourth, and fifth splices should have observed the worn and dangerous condition of the prior splices because they were wearing out within a period of 2 days after being made. If the electricians who made the successive permanent splices did not discover the worn condition of the prior splices at the time they were making additional splices, there was an ample period prior to the strike when the worn splices should have been discovered and corrected during the weekly examination of electrical equipment.

Conclusions. Respondent's witness claimed that bare conductors were visible only in three of the five worn splices, but he agreed that it would have been possible for a person handling the cable at one of the locations of those three splices to have been electrocuted (Tr. 538-539). Therefore, regardless of whether one accepts respondent's description of the splices or MSHA's description of the splices, the violation was very serious. As I have explained and found above, the violation was the result of gross negligence. Therefore, a penalty of \$2,000 will be assessed for this violation of section 75.604.

Exhibit G-2 shows that 11 prior violations of section 75.604 have occurred at respondent's No. 7 Mine since 1973. Five violations occurred in 1974, two occurred in 1975, one occurred in 1976, and one occurred in 1977 prior to September 16, 1977, when the instant violation was cited. The evidence shows, therefore, that respondent has made an effort to reduce the number of violations of section 75.604 which have occurred at its No. 7 Mine, although its record for 1977 had deteriorated to two violations by September of 1977. Consequently, the penalty of \$2,000 will be increased by only \$50 to \$2,050 in view of respondent's relatively favorable history of previous violations.

Docket No. HOPE 78-564-P (MacGregor No. 9 Mine)

Notice No. 3 BRS (7-32) 9/22/77 75.514 (Exhibit G-35)

Findings. Section 75.514 provides that all electrical connections or splices in conductors shall be mechanically and electrically efficient and that suitable connectors shall be used. The section also requires that electrical connections or splices in insulated wires be reinsulated at least to the same degree of protection as the remainder of the wire. Respondent violated section 75.514 because five permanent splices in the trailing cable to the No. 03 shuttle car in the 9 Road Section had been made by tying the conductors together instead of using proper connectors which were

~116

available at respondent's No. 9 Mine. In two of the five defective splices, the ground conductors had been laid parallel and taped. There were holes in the external covering over two of the five permanent splices. The violations were very serious because conductors tied together are inclined to slip which, in turn, may have the effect of causing the two ends of the ground conductors to lose contact when the ends are taped and placed parallel with each other. If a bare conductor should happen to make contact with the frame of a shuttle car at a time when the ground conductor is not connected, any person touching the shuttle car's frame could be electrocuted. Additionally, if the ground conductor is ineffective, the cable may become overheated and cause a spark which could produce a fire or explosion. The probability of an explosion in the No. 9 Mine was reduced by the fact that no methane has ever been detected in the mine. Respondent was grossly negligent for allowing the permanent splices to be made by tying knots in the conductors because respondent's chief electrician knew that his electricians were prone to tie knots in conductors when making splices, but he has never discharged anyone for such practices and there is nothing in the record to show that he has imposed any sanctions on employees who make splices by tying knots in conductors (Tr. 331-334; 337-343; 356; 363-364; 365).

Discussion. Respondent's chief electrician and the inspector agreed that if splices are made in cables by tying knots in the conductors instead of using proper connectors, there is no way to discover that the splices have been made improperly once the splices have been covered by the vulcanized sleeves which are required to be placed over permanent splices (Tr. 353; 358; 365). Respondent's chief electrician, however, knew that the five electricians who were employed at respondent's No. 9 Mine had a propensity for tying knots in conductors (Tr. 365). The practice of making splices by tying knots in the conductors was so prevalent at the No. 9 Mine that the inspector who wrote the instant notice of violation stated that he performed his examination of the permanent splices in this instance because UMWA had made a complaint to MSHA that splices were being improperly made at the mine (Tr. 337). The same five electricians who were employed at the No. 9 Mine when the five improper splices were made are still working at the No. 9 Mine (Tr. 366). There is nothing in the record to show that respondent has announced any sanctions which will be used to assure that proper connectors will be used when splices are made at the No. 9 Mine.

Conclusions. Since the violation was very serious and respondent was grossly negligent for allowing the violation to occur, a penalty of \$2,000 will be assessed for this violation of section 75.514. Exhibit G-2 shows that one prior violation of section 75.514 has occurred at respondent's No. 9 Mine. Therefore, the penalty of \$2,000 will be increased by \$25 to \$2,025 under the criterion of respondent's history of previous violations.

Docket No. HOPE 78-565-P (Paragon Mine)

Order No. 1 RM (7-56) 4/14/77 75.400 (Exhibit G-17)

Findings. Section 75.400 requires that coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustibles be cleaned up and not be permitted to accumulate in active workings or on electric equipment. Respondent violated section 75.400 because loose coal, coal dust, and float coal dust existed on the structures and electrical components of the belt head of the No. 713-C belt conveyor. Additionally, loose coal and coal dust existed along the belt line from the belt head to the tailpiece in depths of from 0 to 17 inches for a distance of 1,500 feet. Most of the accumulations were either under the belt conveyor or in close proximity to the belt (Tr. 155-156). While electrical wires supplied power to the belt drive, the inspector saw no bare wires which created an explosion hazard. The Paragon Mine releases methane, but the inspector did not think methane would be likely to accumulate in the belt entry. For the foregoing reasons, the violation was only moderately serious. Respondent was negligent for permitting the accumulations to occur (Tr. 155-159; 164).

Discussion. The assistant superintendent of respondent's Paragon Mine testified that respondent has a belt examiner who checks the condition of the conveyor belts in the Paragon Mine on each shift. He stated that the belt examiner's book showed that the No. 713-C belt conveyor was okay on April 11. The next entry for April 12 stated "[n]eeds water fixed on head". The subsequent entry for April 13 stated "713-C needs spot cleaned". The entry for the day the instant order was written stated "713-B and C belts need cleaned, needs rollers". The assistant superintendent stated that the belt was not cleaned on April 13 after the belt examiner had indicated that the belt conveyor needed to be "spot cleaned". The inspector testified that no cleaning was being done along the belt at the time he wrote his order on April 14 at 11:22 a.m. (Tr. 157). In such circumstances, the preponderance of the evidence shows that respondent knew about the accumulations before they were cited in the inspector's order, but respondent was taking no steps to clean up the loose coal and coal dust at the time the accumulations were first observed by the inspector. Therefore, I find that the violation of section 75.400 was proved under the former Board's opinion in Old Ben Coal Co., 8 IBMA 98 (1977), which has previously been discussed in this decision.

Conclusions. Since the violation of section 75.400 was only moderately serious and since the combustibles had not been accumulating for a very long period before they were cited by the inspector, a penalty of \$400 will be assessed.

Exhibit G-2 indicates that 65 prior violations of section 75.400 have occurred at respondent's Paragon Mine. In 1970 and in every year

~118

thereafter, there have been at least four violations of section 75.400 at the Paragon Mine. A total of 16 violations occurred in 1976 and five violations of section 75.400 had occurred in 1977 at the Paragon Mine by April 14, 1977. Respondent has not exercised a sufficient effort to reduce accumulations of combustible materials at the Paragon Mine. Therefore, the penalty of \$400 will be increased by \$500 to \$900 because of respondent's unfavorable history of previous violations.

Docket No. HOPE 78-565-P (Paragon Mine)

Order No. 1 RM (7-46) 5/4/77 75.400 (Exhibit G-18)

Findings. Respondent again violated section 75.400 on May 4, 1977, or just 2 weeks after the preceding order citing a violation of section 75.400 was written. This time loose coal, coal dust, and float coal dust existed along the No. 697-A conveyor belt for a distance of 4,000 feet. The accumulations ranged from 0 to 16 inches in depth and were effectively continuous. The accumulations were deepest on both sides of the tailpiece, but float coal dust existed for the entire 4,000-foot length of the conveyor belt. Although the existence of the accumulations had been recorded in the preshift examination book, the inspector saw no cleaning along the belt at the time he issued his order. The violation was moderately serious because no ignition sources were observed by the inspector. Respondent was negligent in permitting the accumulations to occur (Tr. 180-187).

Conclusions. Since the accumulations were reported by the preshift examiner and no steps were being taken to clean up the accumulations at the time the order was written, I conclude that respondent was permitting the accumulations to occur and that a violation of section 75.400 was therefore proven under the former Board's opinion in Old Ben Coal Co., 8 IBMA 98 (1977), supra.

Although the inspector saw no active ignition sources with respect to either the preceding violation of section 75.400 or this violation of that section, the inspector said that he would classify the violation cited on May 4 as more serious than the one cited on April 14 because the violation of May 4 involved an expanse of loose coal, coal dust, and float coal dust which was 2,500 feet longer than the accumulations observed on April 14. I agree with the inspector that the violation observed on May 4 was potentially more serious than the one observed on April 14. The penalty for the violation of May 4 should, therefore, be greater than the penalty previously assessed for the violation of April 14. Consequently, a penalty of \$800 will be assessed for this violation of section 75.400.

Exhibit G-2, as indicated above, shows that 65 prior violations of section 75.400 have occurred at respondent's Paragon Mine. The

preceding violation of section 75.400 which occurred on April 14 raises to six the number of violations of section 75.400 which had occurred in 1977 at the Paragon Mine by April 14, 1977. In view of respondent's unfavorable history of previous violations, the penalty of \$800 will be increased by \$550 to \$1,350.

Docket No. HOPE 78-565-P (Paragon Mine)

Order No. 1 RP (7-62) 4/14/77 75.200 (Exhibit G-19)

Findings. Section 75.200 requires each operator of a coal mine to submit a roof-control plan suitable to the roof conditions and mining system of each coal mine. Respondent's roof-control plan provided that the width of the entries should not exceed 20 feet where roof bolts are the sole means of roof support. Respondent violated section 75.200 because the Nos. 2, 3, 4, 5, and 6 entries in the No. 2 Section were up to 23 feet wide for a distance of 60 feet in by the last open crosscut. The entries were up to 3 feet wider than the 20-foot width permitted by the roof-control plan. Wide entries narrow the size of the pillars left for supporting the roof and increase the stress on the roof span. Although the inspector did not detect any actual loose roof, he said that 80 to 85 percent of the fatalities which occurred in underground coal mines in 1974 and 1976 resulted from failure of operators to comply with their roof-control plans. The potential for a roof fall made the violation serious. Respondent was grossly negligent for allowing the widths to be driven excessively wide for a distance of 60 feet because 2 or 3 days would be required for the mincrs to advance 60 feet while continuously cutting the entries excessively wide (Tr. 195-205).

Discussion. Respondent's assistant superintendent testified that because of illness, vacations, etc., respondent had a shortage of section foremen at the time Order No. 1 RP was written and that it had been necessary to use a section foreman from another mine. The substitute section foreman was inexperienced in supervising a section in which a continuous mining machine was used (Tr. 210). The assistant superintendent conceded, however, during cross-examination that the excessive widths occurred over a period of several days and that during part of that time, an experienced section foreman was also driving the entries excessively wide (Tr. 213). The assistant mine superintendent said there was no way to know which foreman had driven which parts of the entries and he concluded that both of them were probably driving the entries wider than they should have been driven.

The inspector said that it was a section foreman's duty to note when excessive widths were being driven and that he should have been able to narrow the cuts back to the proper width (Tr. 207). Additionally, since the roof bolter had begun to install five rows of bolts to compensate for the excessive width, the section foremen should have noticed the extra row of roof bolts and should have narrowed

~120

the entries so that the extra row of roof bolts would not have been necessary. Moreover, the section foremen should have recognized the excessive widths and should have installed timbers or cribs in order to give the roof increased support (Tr. 205).

Respondent's assistant mine superintendent also testified that after the inspector cited the excessive widths, respondent had its engineers measure the entries cited in the inspector's order. The engineers measured the entries at 10-foot intervals and found the widths of the entries to be as follows: No. 2 entry ranged from 17.95 to 21.70 feet and averaged 20.33 feet. No. 3 entry ranged from 19.70 to 22.20 feet and averaged 20.82 feet. No. 4 entry ranged from 21.5 to 23 feet and averaged 22.25 feet. No. 5 entry ranged from 19.70 to 22.50 feet and averaged 20.74 feet. No. 6 entry ranged from 20.75 to 23.20 feet and averaged 21.71 feet (Tr. 212). The engineers' measurements support the inspector's order by showing that all the entries cited in the inspector's order were excessively wide in some places. The No. 4 entry was especially wide since it averaged 2.25 feet in excess of the 20-foot width required by respondent's roof-control plan.

Conclusions. As the inspector's testimony shows, it is extremely important that operators carefully adhere to their roof-control plans. Although the evidence fails to show that roof conditions were fragile in the No. 2 Section, it is essential that miners be given as much protection against potential roof falls as possible. Since the violation was serious and respondent was grossly negligent for allowing the entries to be driven wide for several days, a penalty of \$2,000 will be assessed for this violation of section 75.200.

Exhibit G-2 indicates that 53 prior violations of section 75.200 have occurred at respondent's Paragon Mine. There were 10 violations in 1975 and eight violations in 1976. Only one violation had occurred in 1977 prior to April 14, 1977, the date of the instant violation. The evidence, therefore, shows that respondent has made an effort to reduce the number of violations of section 75.200 which have been occurring at its Paragon Mine. Therefore, the penalty of \$2,000 will be increased by only \$100 to \$2,100 because of the improving trend in frequency of violations of section 75.200 at respondent's Paragon Mine.

Docket No. HOPE 78-566-P (Paragon Mine)

Order No. 1 EW (7-129) 9/20/77 75.517 (Exhibit G-15)

Findings. Except for certain wires not here relevant, section 75.517 provides that power wires and cables shall be insulated adequately and be fully protected. Respondent violated section 75.517 because the trailing cable to the continuous mining machine in the No. 2 Unit contained six places in the outer jacket with insufficient

~121

insulation. Bare wires for a distance of 1 inch were exposed at three of the locations and the mine floor was wet. The continuous mining machine was not operating at the time the six inadequately insulated places were observed, but the machine had been operating on the previous shift. When the machine did operate, the trailing cable conducted 440 volts of alternating current. The six inadequately insulated places began at a point 30 feet outby the continuous mining machine and ended at a point 50 feet outby the machine. A defect in a trailing cable no larger than a pinhole is a sufficiently large opening to cause electrocution if a cable is touched where the hole exists. The violation was very serious (Tr. 117-121).

The inspector had examined the No. 2 Section on September 16, 1977, or 4 days prior to the day he wrote Order No. 1 EW here involved. During the previous inspection, he had observed the inadequate insulation but he did not then inspect the trailing cable because the continuous mining machine was out of service and was being repaired. The inspector, however, advised the section foreman, and both the assistant mine superintendent and the mine superintendent that the trailing cable to the continuous mining machine needed repairs and that he would inspect the trailing cable at a later date (Tr. 125; 130).

After the inspector had told them about the inadequate insulation on the trailing cable on September 16, the assistant mine superintendent called the supply house and ordered the supply house personnel to send to the mine the materials needed to repair the cable. The chief electrician told the electrician on the night shift to make the required repairs. The chief electrician then entered in the electrical book provided for recording examinations of electrical equipment that the repairs had been made. After the inspector issued his order on September 20, 1977, citing the six defective places in the trailing cable, the assistant mine superintendent again asked the chief electrician about the repairs which were supposed to have been made on September 16, and the chief electrician insisted that the repairs had been made on September 16. Therefore, the assistant mine superintendent testified that he had to assume that the repairs were made on September 16 and that additional defective places appeared in the cable between the inspector's cursory examination on September 16 and his careful inspection on September 20 when the order citing the inadequate insulation was issued (Tr. 130-138).

No one doubted the inspector's finding that six inadequately insulated places were observed in the trailing cable on September 20 (Tr. 135). The inspector presented rebuttal testimony in which he stated that he believed that the six inadequately insulated places he observed on September 20 were the same defective places which he saw in the cable on September 16, but he conceded that he did not observe the cable continually between September 16 and September 20 and could

~122

not, therefore, state with certainty that no repair work had been performed on the cable between September 16 and September 20 (Tr. 143; 147-148). Respondent was negligent for failing to make certain that the defective places in the trailing cable were repaired (Tr. 143; 147-148).

Discussion. The entry made by the chief electrician in the electrical examination book was "[r]etaped bad splices in cable, Number 22 miner" (Tr. 132). That entry supports a conclusion that the chief electrician may have misunderstood what type of defects the inspector wanted corrected because no "bad splices" were involved. There had been no severed wires which would have required the making of splices. The bare conductors observed by the inspector were places where the insulation had been damaged so as to expose conductors. That type of defective insulation can be repaired simply by covering the defective places with proper tape so as to restore the insulation and prevent possible shock (Tr. 149-150). The assistant mine superintendent was definitely under the impression that permanent splicing materials would be required to repair the trailing cable because the materials which he ordered the supply department to send to the mine were materials for making permanent splices (Tr. 142).

There is every reason to believe that the defective insulation reported to management on September 16 was not repaired before September 20 simply because the assistant mine superintendent and mine superintendent misunderstood the type of defect which the inspector wanted corrected. Therefore, the electrician who made the actual repairs could easily have retaped permanent splices in the trailing cable without realizing what he was supposed to be looking only for defective insulation at places where no splices were needed.

Despite the confusion about what the inspector actually told management on September 16, the fact remains that extremely dangerous bare conductors were exposed in the trailing cable at a point which was no more than 50 feet cut by the continuous mining machine. The machine was out of service for repairs on September 16. The section foreman knew that the inspector had seen some defects in the trailing cable. The least he could have done between September 16 and September 20 would have been to have examined the trailing cable so as to make sure that it was properly insulated from one end to the other. The gravity of existence of bare conductors in a 440-volt trailing cable in a wet section is so great that no section foreman or chief electrician should have left any doubt as to whether such bare conductors had been located and fully reinsulated as required by section 75.517.

Conclusions. Respondent's witness did not dispute the fact that bare conductors in a trailing cable expose miners to possible electrocution, particularly when it is considered that the mine was wet in the area where the continuous mining machine was being operated. There was at least ordinary negligence by management in not having



~123

made sure that the trailing cable was adequately insulated between the inspector's informal warning given on September 16 and his official inspection made on September 20. In any event, the extreme gravity of the violation warrants assessment of a penalty of \$4,000 (Tr. 121-124).

Exhibit G-2 indicates that there have been 11 prior violations of section 75.517 at respondent's Paragon Mine. One violation occurred in 1970 and none occurred in 1971 or 1972. In all other years between 1970 and 1977 one violation occurred except for the years 1973 and 1976 when three and four violations, respectively, occurred. In 1977 one violation had occurred prior to September 20, 1977, when the instant violation occurred. The largest number of violations of section 75.517 occurred in 1976. Two had occurred by September 20, 1977, and that is a poorer record of compliance than the Paragon Mine has achieved for 5 other years prior to 1976. In such circumstances, the penalty of \$4,000 will be increased by \$200 to \$4,200 under the criterion of respondent's history of previous violations.

#### Summary of Assessments and Conclusions

(1) On the basis of all the evidence of record and the foregoing findings of fact, respondent is assessed the following civil penalties:

Docket No. HOPE 78-315-P (No. 4-H UG Mine)		
Notice No. 1 DTN (6-39) 11/30/76	75.400	\$550.00
Assessments in Docket No. HOPE 78-315-P		\$550.00
Docket No. HOPE 78-559-P (No. 4-H UG Mine)		
Notice No. 1 JCH (7-7) 5/13/77	75.1103-4	\$ 1,000.00
Total Assessments in Docket No. HOPE 78-559-P		\$ 1,000.00
Docket No. HOPE 78-560-P (No. 4-H UG Mine)		
Order No. 1 DPC (7-35) 8/4/77	75.200	\$ 4,400.00
Total Assessments in Docket No. HOPE 78-560-P		\$ 4,400.00
Docket No. HOPE 78-561-P (No. 4-H UG Mine)		
Order No. 1 JCH (7-8) 5/13/77	75.400	\$ 950.00
Total Assessments in Docket No. HOPE 78-561-P		\$ 950.00

## Docket No. HOPE 78-316-P (No. 5 Mine)

Order No. 1 RAN (6-77) 11/30/76	75.302-1	\$ 2,025.00
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Total Assessments in Docket No. HOPE 78-316-P		\$ 2,025.00
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## Docket No. HOPE 78-317-P (No. 5 Mine)

Notice No. 1 RAN (6-76) 11/30/76	75.402	\$ 2,000.00
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Total Assessments in Docket No. HOPE 78-317-P		\$ 2,000.00
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## Docket No. HOPE 78-562-P (MacGregor No. 7 UG Mine)

Order No. 1 SWG (7-88) 11/4/77	75.400	\$ 2,500.00
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Order No. 1 SWG (7-102) 11/9/77	75.514	6,050.00
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Order No. 1 RJW (7-103) 11/11/77	75.518	1,500.00
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Order No. 2 RJW (7-104) 11/11/77	75.518	1,500.00
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Total Assessments in Docket No. HOPE 78-562-P		\$11,550.00
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## Docket No. HOPE 78-563-P (MacGregor No. 7 UG Mine)

Notice No. 3 OEB (7-13) 9/16/77	75.604	\$ 2,050.00
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Total Assessments in Docket No. HOPE 78-563-P		\$ 2,050.00
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## Docket No. HOPE 78-564-P (MacGregor No. 9 Mine)

Notice No. 3 BRS (7-32) 9/22/77	75.514	\$ 2,025.00
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Total Assessments in Docket No. HOPE 78-564-P		\$ 2,025.00
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## Docket No. HOPE 78-565-P (Paragon Mine)

Order No. 1 RM (7-46) 5/4/77	75.400	\$ 1,350.00
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Order No. 1 RM (7-56) 4/14/77	75.400	900.00
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Order No. 1 RP (7-62) 4/14/77	75.200	2,100.00
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Total Assessments in Docket No. HOPE 78-565-P		\$ 4,350.00
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~125

Docket No. HOPE 78-566-P (Paragon Mine)

Order No. 1 EW (7-129) 9/20/77	75.517	\$ 4,200.00
Total Assessments in Docket No. HOPE 78-566-P		\$ 4,200.00
Total Assessments in This Proceeding		\$35,100.00

(2) MSHA's Petition for Assessment of Civil Penalty filed in Docket No. HOPE 78-415-P should be dismissed for failure of MSHA to prove that a violation of section 77.205(a) existed as alleged in Notice No. 1 NK (7-5) dated April 7, 1977.

(3) Respondent at all pertinent times was the operator of the Amherst No. 4-H UG Mine, the Amherst No. 5 Mine, the MacGregor Preparation Plant, the MacGregor No. 7 UG Mine, the MacGregor No. 9 Mine, and the Paragon Mine and as such is subject to the provisions of the Act and to the health and safety standards promulgated thereunder.

WHEREFORE, it is ordered:

(A) Amherst Coal Company is assessed civil penalties totaling \$35,100.00 which it shall pay within 30 days from the date of this decision.

(B) The Petition for Assessment of Civil Penalty filed in Docket No. HOPE 78-415-P is dismissed for the reason stated in paragraph (2) above.

Richard C. Steffey  
Administrative Law Judge

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FOOTNOTES START HERE

~FOOTNOTE\_ONE

1. Daily production for 1977 was not given with respect to the No. 5, Lundale No. 2, and MacGregor No. 8 Mines. Therefore, the daily production for those three mines is for 1976. The record does not show whether the daily production for the Lundale No. 3A Mine was for 1976 or 1977 (Tr. 603).

~FOOTNOTE\_TWO

2. Respondent's chief electrician testified that the 4-H Mine operates seven belt flights (Tr. 92), whereas the inspector's notice and testimony refer to nine belt flights. The inspector had gone to examine the fire sensors on the basis of a complaint filed by the UMWA. Since this was the first and only visit the inspector made to the 4-H Mine, I find that the chief electrician's testimony as to the number of belt flights in the 4-H Mine is more likely to be correct than the count of an inspector who had made only one trip to the 4-H Mine.

~FOOTNOTE\_THREE

3. The inspector testified that the mine foreman told him that he had personally bridged over the fuses in the switch box (Tr. 551; 556). The mine foreman testified that he did not tell

the inspector that he had bridged over the fuses (Tr. 622). I have found that respondent was grossly negligent in bridging over the fuses. I would not change the finding as to negligence regardless of whether the mine foreman did the bridging or some other employee did it as all of respondent's witnesses agreed that fuses of the proper size were readily available at the time and that it was unnecessary to bridge over the fuses (Tr. 564; 576; 594).