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

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

Civil Penalty Proceeding

Docket No. MORG 79-107-P
A.O. No. 46-02845-03002

v.

Mine No. 1

LAUREL RUN MINING COMPANY,
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSAL

The Laurel Run Mine is not a gassy mine. A methane emission has, so it is claimed, never been detected. Even so, section 305(a)(3) of the Act, 30 CFR 75.503 requires that "all electric face equipment" taken into or used in by the last open crosscut be maintained in a permissible condition. In addition, section 305(g) of the Act, 30 CFR 75.512 requires that "all electric equipment" whether or not used in the face area be frequently examined, tested, and properly maintained to assure safe operating conditions. It seems clear therefore that any violation of 75.503 would be a violation of 75.512. On the other hand, not every violation of 75.512 is a violation of 75.503.

On April 6, 1978, the safety record at the Laurel Run Mine led a mine inspector to conclude that because of the "number of permissibility citations" (75.503) issued at the mine the "program for proper maintenance of the electrical equipment at the mine was in need of upgrading". For this reason, he issued a citation charging a violation of 75.512.

The Solicitor moves to withdraw this charge on the ground that evidence which shows a pattern of permissibility violations does not properly lie under 75.512. I believe this is correct because:

1. The citation does not comply with the notice requirements of section 104(e)(1) of the Act, as amended, 30 U.S.C. 814(e)(1).

2. The citation does not charge that the pattern of permissibility violations alleged were of such a nature as could have significantly and substantially contributed to the cause and effect of a mine safety hazard.(FOOTNOTE 1)

3. The Secretary has not issued the rules mandated by section 104(e)(4) of the Act establishing the criteria for determining when a pattern violation occurs.

4. It has been determined that absent the authority conferred by section 104(e) instances of repetitive violations of the permissibility standard must be charged individually or not at all. See Alabama By-Products Corporation v. MSHA, Docket No. BARB 77-73, Decision of October 13, 1978, Luoma, J.(FOOTNOTE 2)

Accordingly, it is ORDERED that the motion to withdraw Citation 13265 be, and hereby is, GRANTED.

With respect to the two 75.503 violations charged, my independent evaluation and de novo review of the circumstances lead me to conclude that the motion to approve settlement of these charges at the amounts originally assessed, \$122.00 each, is in accord with the purposes and policy of the Act.

Consequently, it is ORDERED that the motion to approve settlement be, and hereby is, GRANTED, that respondent pay the agreed upon penalty of \$244.00 on or before Monday, June 25, 1979, and that subject to payment the captioned petition be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge

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FOOTNOTES START HERE

~FOOTNOTE_ONE

1. This is rather inexplicable since even in the absence of methane an ignition from a nonpermissible piece of electric face equipment can cause a mine fire or explosion.

~FOOTNOTE_TWO

2. On November 28, 1978, the Commission vacated its order docketing this decision for review, thereby allowing it to become a final decision of the Commission. The Secretary did not seek review of the decision by the courts. This means that until the Secretary acts to implement section 104(e) it is, for all practical purposes, a dead letter and unenforceable.