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SOL (MSHA) V. REPUBLIC STEEL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

Civil Penalty Proceedings

Docket No. PENN 79-137  
A.O. No. 36-00809-03022V

v.

Newfield Mine

REPUBLIC STEEL CORPORATION,  
RESPONDENT

Docket No. PENN 79-138  
A.O. No. 36-00973-03019V

Docket No. PENN 79-139  
A.O. No. 36-00973-03022V

Docket No. PENN 79-140  
A.O. No. 36-00973-03024V

Docket No. PENN 80-34  
A.O. No. 36-00973-03026V

Banning Mine

DECISION AND ORDER

The parties move for approval of a settlement of the captioned matters in the amount of \$9,350.00 or 81% of the \$11,500.00 initially assessed for the eight unwarrantable failure violations charged.

For the reasons set forth in the parties' motions and based on an independent evaluation and de novo review of the circumstances, I find the settlement proposed for citation/order numbers 618528, 391918, 618446, 618427, and 618467 are in accord with the purposes and policy of the Act.

On the other hand, I find the reductions proposed for citation/order numbers 618460 and 618436, are for the reasons set forth below unjustified. I further find that not only the reduction but the amount initially assessed for closure order number 618607 failed to take into account the fact that three separate and distinct violations of the standard cited occurred.

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More specifically, an evaluation of the escapeway violation cited in unwarrantable failure citation 618460 shows the amount initially assessed was proper and that no reduction is warranted. The mitigating circumstances offered, namely that an able bodied miner could squeeze through the 42 by 31 inch passage is insufficient to justify a reduction in view of the requirement that all escapeways be maintained so as to insure the passage at all times of disabled miners. The panic that would ensue and the hazard to life and limb that would be created in attempting to carry a disabled miner through this small opening in the event of a fire or explosion that created noxious gases necessitating the use of self-rescuers would present all the ingredients of a mine disaster. Furthermore, this condition was known and allowed to exist for almost a month before the inspector discovered it. The fact that the other return airway could be used would be of little use to miners trapped and trying to find their way out with a disabled buddy in the smoke and confusion of an emergency. For these reasons, I conclude the amount initially assessed for this violation, \$1,000.00, is warranted.

An evaluation of the roof control violation cited in order number 618436 shows that contrary to the parties representations the mechanic responsible for knocking out the temporary roof supports with a continuous miner was grossly negligent. Despite this, there is no claim he was disciplined or otherwise made aware of the seriousness of his actions or that the operator did not by its silence and acquiescence condone his flagrant disregard for safe mining practices. Unless and until compliance is extracted on a voluntary basis from the mine superintendent to the common laborer, the negligence of each or any of them must be imputed to the operator. In addition, the operator was independently negligent in failing to train the mechanic in the proper procedure for moving a continuous miner without knocking out temporary supports or endangering off the area after he did knock them out. On the basis of the record considered as a whole, I conclude the amount initially assessed for this violation, \$1,500.00, is fully warranted.

Finally, a review of the circumstances relating to closure order 618607 shows that for a distance of 200 feet accumulations of loose coal, coal dust and float coal dust having the explosive potential of black gun powder was discovered on the floor and ribs of the 1, 2, and 4 entries and crosscuts of the 007 section of the Banning Mine. The 2 and 4 entries were shuttle car haulageways which presented the potential for an ignition source due to the presence of trailing cables. While spot rock dust samples were taken, no 75.403 violation was charged. Nevertheless, it is clear that three separate and distinct violations of 75.400 were observed in three separate and distinct physical locations. Further, they were unwarrantable failure violations that with the exercise of due diligence the operator could have prevented. I conclude the amount of the penalty warranted for the three violations cited is \$500.00 each for a total of \$1,500.00.

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Accordingly, it is ORDERED that to the extent indicated the parties' motion to approve settlement be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay in full settlement of these violations a penalty of \$11,100.00 on or before Friday, March 28, 1980 and that subject to payment the captioned petitions be DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge