

CCASE:  
SOL (MSHA) V. CONSOLIDATION COAL  
DDATE:  
19800319  
TTEXT:

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 80-19  
A.O. No. 36-00807-03030

v.

Renton Mine

CONSOLIDATION COAL COMPANY,  
RESPONDENT

Docket No. PENN 80-21  
A.O. No. 36-03298-03013V

Docket No. PENN 80-22  
A.O. No. 36-03298-03014

Laurel Mine

DECISION AND ORDER

Based on an independent evaluation and de novo review of the circumstances, I conclude the \$95.00 reduction in the penalties initially assessed for citations 622623 and 622624 is justified and in accord with the purposes and policy of the Act.

With respect to the unwarrantable failure violation cited in citation 617909, I conclude the reduction proposed, \$200, is unjustified in view of the gravity and negligence involved. The reason advanced, namely that operation of the jeep in low gear reduced the probability that its collision with a miner would be fatal or disabling is unpersuasive. Next to roof falls haulage accidents are the largest cause of fatalities in the mines. The knowing operation of a jeep for 10 days without a braking system that could be rapidly activated is inexcusable. I conclude, therefore, that the initial assessment of \$2,000 was fully warranted.

The citation charging a violation of 75.403 is invalid as a matter of fact and law. The standard requires that the incombustible content of a working area on an intake split be "maintained" at 65%. Here only one out of 14 of the band samples showed a deficiency in incombustible content. This is not probative of the allegation that the 2 West Section was not being "maintained" in a properly rock dusted condition at the time the violation was charged.

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Accordingly, it is ORDERED that the motion as to citations 622623 and 622624 be, and hereby is, GRANTED. It is FURTHER ORDERED that citation 802789 be, and hereby is, VACATED. Finally, it is ORDERED that the operator pay a penalty of \$2,325.00 in full settlement of these matters on or before Friday, April 4, 1980 and that subject to payment the captioned petitions be DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge