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SOL (MSHA) V. NEW FUEL  
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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. WEVA 82-250  
A.O. No. 46-05490-03007V

v.

No. 25 Kelly Hatfield Mine

NEW RIVER FUEL, INC.,  
RESPONDENT

Docket No. WEVA 82-251  
A.O. No. 46-05490-03008V

No. 26 Kelly Hatfield Mine

DECISIONS

Appearances: Howard Agran, Attorney, U.S. Department of Labor,  
Office of the Solicitor, Philadelphia, Pennsylvania,  
for the petitioner

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), charging the respondent with a total of four alleged violations of certain mandatory safety standards promulgated pursuant to the Act. Respondent contested the citations and requested a hearing. A consolidated hearing was convened pursuant to notice in Charleston, West Virginia, on November 4, 1982. In view of a proposed settlement of the cases, arguments in support of the settlement were heard on the record and a bench decision was issued approving the settlements.

Discussion

The citations issued in these cases are as follows:

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Section 104(d)(1) Citation No. 906335, November 17, 1981, cites a violation of mandatory safety standard 30 CFR 75.603, and the condition or practice cited is as follows:

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Two temporary splices were found in the trailing cable supplying power to the cutting machine being operated in the 001-0 section.

Section 104(d)(1) Order No. 906338, November 19, 1981, cites a violation of 30 CFR 77.506, and the condition or practice cited is as follows:

Two 25 amp fuses protecting the breaker box located in the lamp house and supplying power to the heater and the stationary grinding machine were bridged out with wire. Also, the four fuse holders for the 2 heaters contained welding rods instead of fuses.

Section 104(d)(2) Order No. 906339, November 19, 1981, cites a violation of mandatory safety standard 30 CFR 77.700, and the condition or practice cited is as follows:

The stationary grinding machine located in front of the lamp house was not frame grounded.

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Section 104(d)(2) Order No. 907002, February 12, 1982, cites a violation of mandatory safety standard 30 CFR 77.1605(b), and the condition or practice cited is as follows:

The foot brake on the Michigan endloader would not stop said endloader when brake was tested.

The citations, assessments, and proposed settlements are as follows:

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Citation No.	Date	30 CFR Section	Assessment	Settlement
906335	11/17/81	75.603	\$ 300	\$ 250
906338	11/19/81	77.506	750	500
906339	11/19/81	77.700	500	400
			\$1550	\$1150

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Citation No.	Date	30 CFR Section	Assessment	Settlement
907002	2/12/82	77.1605(b)	\$ 750	\$ 500

The arguments advanced by the petitioner in support of the proposed settlements follow below.

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Citation No. 906335

In support of the proposed settlement of this citation by a payment of \$250, petitioner's counsel asserted that the inspector first believed that the respondent had permitted the cutting machine to operate for a month with two temporary splices. However, the respondent maintains that the splices in question were in fact permanent cold splices and not temporary ones. Further, counsel states that when the inspector first observed the two splices he conceded that they adequately covered the cable areas which were spliced.

With regard to the respondent's negligence, petitioner's counsel stated that the cited conditions should have been known to mine management. As for the gravity connected with the citation, counsel asserted that there was a potential shock hazard present, but only if the splices had been subjected to further deterioration.

Citation No. 906338

With regard to the proposed settlement of this citation by a payment of \$500, petitioner's counsel stated that the respondent maintained that the inspector first believed that the mine operator himself bridged out the breaker box in question. However, during his discussions with the respondent, counsel stated that the respondent's defense is that a security guard working the night shift made the fuse box changes after the regular fuses blew out, and that he did so to provide heat for the lamp house where he was located. Respondent maintains that he had no knowledge that this had been done and also maintained that the lamp-house was not an area that was required to be preshifted.

Petitioner's counsel stated that the respondent exhibited good faith compliance by immediately removing the bridging devices and installing proper fuses. Counsel also believed that the respondent should have known about the conditions, and that the gravity was "probable" in that the bridged-out fuses would over-ride the normal protection provided by regular fuses.

Citation No. 906339

In support of the proposed settlement of this citation by the payment of \$400, petitioner's counsel stated that the respondent's defense is that he had no prior knowledge of the cited condition because the lamp house was not required to be preshifted. While counsel believed that the gravity of the cited condition was such as to present the "probability" of an accident, he also indicated that the respondent promptly removed the grinding machine from service when the condition was called to his attention. Counsel also believed that the respondent should have been aware of the cited condition.

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Citation No. 907002

The parties proposed a settlement payment of \$500 for Citation No. 907002. In support of this proposal, petitioner's counsel asserted that his investigation of the facts and circumstances surrounding the endloader brake conditions reflects that the inspector observed it operating some fifteen minutes before the brakes were tested, but at that time it was sitting unattended at the side of the work site. Counsel also indicated that the respondent's defense is that the endloader was parked and taken out of service. While it was not "tagged-out", the respondent takes the position that this was not necessary since his operation is so small that he would know that the endloader was taken out of service.

Petitioner's counsel stated further that the respondent demonstrated good faith abatement in that the endloader was immediately removed from service and a broken airline was replaced. With regard to the question of negligence, counsel asserted that the respondent should have been aware of the brake conditions, and that there was a potential present for an accident had the equipment been used further.

#### Respondent's Size of Business

Petitioner's counsel stated that the respondent is a small mine operator who owns and operates the one mine in question in this case. As of April 20, 1982, annual mine production was 50,000 tons. However, respondent indicated that current mine production is approximately 300 tons daily, and that the mine operates five days a week employing 25 miners. Since respondent has agreed to pay the proposed settlement amounts, petitioner asserted that the payment of same will not adversely affect the respondent's ability to continue in business.

#### History of prior violations

Petitioner's counsel stated that the respondent's mine is a new mine with no record of any previous violations. However, counsel asserted that the respondent previously operated another mine and that for a two-year period the mine had a history of 14 paid civil penalty assessments, none of which were for violations of any of the mandatory safety standards in issue in these proceedings.

#### Conclusion

After careful review and consideration of the arguments advanced by the petitioner in support of the proposed settlements, I conclude and find that the settlements are reasonable and in the public interest. Accordingly, pursuant to 29 CFR 2700.30, they are APPROVED.

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ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the citations in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this proceeding is DISMISSED.

George A. Koutras  
Administrative Law Judge