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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

U.S. STEEL CORPORATION,  
APPLICANT

v.

SECRETARY OF LABOR,  
RESPONDENT

v.

SECRETARY OF LABOR,  
PETITIONER

v.

U.S. STEEL CORPORATION,  
RESPONDENT

Contest of Citation

Docket No. PENN 81-207-R

Cumberland Mine

Civil Penalty Proceeding

Docket No. PENN 81-221

AC No. 36-05018-03089V

Cumberland Mine

DECISION

Appearances: Louise Q. Symons, Esq., U.S. Steel Corporation, Pittsburgh, PA,  
for U.S. Steel Corporation

Robert Cohen, Esq., US Department of Labor, Office of the  
Solicitor, Arlington, VA, for Secretary of Labor

Before: Judge Fauver

These proceedings involve the same citation. The Secretary seeks a civil penalty and the operator seeks review and vacating of the citation, under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. The cases were consolidated and heard at Morgantown, West Virginia.

Having considered the contentions of the parties and the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times, U.S. Steel operated an underground mine known as Cumberland Mine, which produced coal for sale or use in or substantially affecting interstate commerce.

2. On June 19, 1981, MSHA Inspector Robert Newhouse

inspected the South Right section of the mine and found accumulations of loose coal and float coal dust in the center of the roadways and along the ribs in the areas and distances designated by spiraled lines on Govt. Exhibit No. 1.

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3. The accumulations were about five feet in width in the center of the roadways, smaller widths along the ribs, and ranged in depth from zero to four inches. The accumulations were black and had been run over by vehicles, accounting for the float coal dust.

4. The mine liberates substantial quantities of methane.

5. Based on his findings, Inspector Newhouse issued a citation under section 104(d) of the Act, charging a violation of 75 CFR 75.400.

6. The areas cited were traveled by men and vehicles.

7. There were sources of ignition in the cited areas.

#### DISCUSSION WITH FURTHER FINDINGS

The Secretary has charged U.S. Steel with a violation of 75 CFR 75.400, which provides:

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

U.S. Steel contends that there was an accumulation of loose coal in only one of the cited areas, not in the rest cited by the inspector. This accumulation was described by a U.S. Steel witness as being about ten feet long, two feet wide, an inch or two deep, and caused by spillage from a vehicle at the junction of No. 3 Entry and No. 94 Crosscut. It also contends that its dust samples taken in all the areas cited showed adequate rock-dusting except in the one area in which it concedes there was an accumulation.

I find that the inspector's testimony and his firsthand notes of his observations as to the accumulations are credible, and more reliable than the testimony of U.S. Steel's witnesses on these points. I also find that the dust samples introduced by U.S. Steel are not reliable because of a change of conditions in at least some of the areas and the likelihood of change in the others, between the time the citation was issued and the time the dust samples were taken. I credit the inspector's testimony as to color and approximate dimensions and quantities of loose coal and float coal dust in each of the cited areas.

The accumulations constituted a serious violation because of the hazard of a methane or float coal dust explosion and its propagation by substantial quantities of combustible material accumulated over large areas. I also find that the accumulations could have been prevented by the exercise of reasonable care. The violation was an unwarranted failure to comply with the cited standard, due to the operator's negligence.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of these proceedings.

2. U.S. Steel violated 75 CFR 75.400 as charged in Citation No. 843779. Based upon the statutory criteria for assessing a civil penalty for a violation of a safety standard, U.S. Steel is assessed a penalty of \$800 for this violation.

Proposed findings or conclusions inconsistent with the above are rejected.

ORDER

WHEREFORE IT IS ORDERED:

1. U.S. Steel shall pay the Secretary of Labor the above-assessed penalty of 800.00 within 30 days from the date of this decision.

2. Citation No. 843779 is AFFIRMED and the proceeding in Docket No. PENN 81-207-R is DISMISSED.

WILLIAM FAUVER  
JUDGE