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SOL (MSHA) V. U.S. STEEL MINING  
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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 PROCEEDING

Docket No. PENN 82-337  
A.C. No. 36-03425-03505

v.

Maple Creek No. 2 Mine

U.S. STEEL MINING COMPANY, INC.,  
RESPONDENT

DECISION

Appearances: Covette Rooney, Esq., Office of the Solicitor,  
U.S. Department of Labor, Philadelphia,  
Pennsylvania, for Petitioner Louise Q. Symons,  
Esq., Pittsburgh, Pennsylvania, for Respondent

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks penalties for two violations of mandatory safety standards. The violations were charged in citations which alleged that the violations were significant and substantial. During the hearing, the inspector conceded that the violation charged in Citation No. 1249719 was not significant and substantial. Respondent does not contest the fact that the violations occurred but denies that they were significant and substantial and contests the penalties proposed. Pursuant to notice, the case was heard in Uniontown, Pennsylvania on April 29, 1983. Francis Wehr and Alvin Shade testified on behalf of Petitioner; Samuel Cortis testified on behalf of Respondent. Each party has filed a posthearing brief. Based on the entire record, and considering the contentions of the parties, I make the following decision.

FINDINGS OF FACT

1. Respondent is the owner and operator of an underground coal mine in Washington County, Pennsylvania, known as the Maple Creek No. 2 Mine.

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2. The subject mine has an annual production of 872,848 tons of coal and Respondent has a total annual production of 15 million tons. Respondent is a large operator.

3. The assessment of civil penalties in this case will not affect Respondent's ability to continue in business.

4. Between June 3, 1980 and June 2, 1982, there were 656 paid violations in the subject mine. Of these, two were violations of 30 C.F.R. 75.1105, and eleven were violations of 30 C.F.R. 75.605. This is a moderate history of prior violations, and penalties otherwise appropriate will not be increased because of the history.

5. The imposition of penalties for the violations charged will not affect Respondent's ability to continue in business.

6. Each of the violations charged occurred except as otherwise found herein and in each case the violation was abated promptly and in good faith.

7. Citation No. 1249719 issued May 19, 1982, charged a violation of 30 C.F.R. 75.605, consisting of a loose strain clamp on the trailing cable of a roof bolter.

8. Citation No. 1249387 issued May 7, 1982, charged a violation of 30 C.F.R. 75.1105 because the air current used to ventilate the battery charging station was not coursed directly into the return. Coal was not being mined, but mechanics were present on the section.

9. The hazard presented by the latter violation was two-fold: (1) toxic fumes from the battery could be coursed to the working faces; (2) should a fire occur, the smoke would be coursed to the working faces.

10. The condition described in Citation No. 1249387 had been cited on prior occasions at the subject mine.

#### ISSUES

1. Was the violation charged in Citation No. 1249387 properly designated significant and substantial?

3. What is the appropriate penalty for the violations?

#### CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in the operation of the subject mine, and the undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.

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2. The violation of 30 C.F.R. 75.605 charged in Citation No. 1249719 issued on May 19, 1982, occurred, but was not of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard. The violation was not serious. It was not known to Respondent and was not readily apparent. Respondent "might have been aware of it" on weekly examination of the equipment. Negligence was not shown.

3. Whether a cited violation is found to be significant and substantial is per se irrelevant to a determination of the appropriate penalty to be assessed. The Commission is not bound by the Secretary's regulations setting out how he proposes to assess penalties. Secretary v. U.S. Steel Mining Co., Inc. 5 FMSHRC 934 (1983) (ALJ).

4. Based on a consideration of the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation charged in Citation No. 1249719 is \$30.

5. Respondent argues in its brief that the condition cited in Citation No. 1249387 was not a violation of 30 C.F.R. 75.1105. However, in its answer, in effect it admitted the violation, challenging only the significant and substantial designation. I conclude that a violation of the mandatory safety standard was shown. The battery charging station involved herein was "an area enclosing electrical installations" and air currents ventilating it are required to be coursed directly to the return.

6. The condition cited was reasonably likely to result in reasonably serious injuries, either from toxic fumes or smoke inhalation. The violation was serious.

7. The violation was known or should have been known to Respondent. It had been cited before. The violation therefore, was the result of Respondent's negligence.

8. Based on a consideration of the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation charged in Citation No. 1249387 is \$250.

#### ORDER

Based on the above findings of fact and conclusions of law,  
IT IS ORDERED

1. The violation of 30 C.F.R. 75.605 described in Citation No. 1249717 was not significant and substantial.

2. Respondent shall within 30 days of the date of this decision pay the sum of \$30 for the violation of 30 C.F.R. 75.605 found herein to have occurred.

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3. The violation of 30 C.F.R. 75.1105 was properly designated as significant and substantial.

4. Respondent shall within 30 days of the date of this decision pay the sum of \$250 for the violation of 30 C.F.R. 75.1105 found herein to have occurred.

James A. Broderick  
Administrative Law Judge