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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 83-3  
A.C. No. 36-05018-03503

v.

Cumberland Mine

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

DECISION

Appearances: Matthew J. Rieder, 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

This proceeding involves a single citation issued June 16, 1982, alleging a violation of a safeguard notice issued August 12, 1980, requiring that all track haulage switches be provided with reflector lights or some other means to show the direction of the switch throw. The subject citation charges a violation of 30 C.F.R. 75.1403. Respondent concedes that the violation occurred but denies that it was significant and substantial and contests the amount of the penalty. Pursuant to notice, the case was heard in Uniontown, Pennsylvania, on June 21, 1983. Clarence D. Moats, Robert W. Newhouse and Eugene W. Beck testified on behalf of Petitioner; Don Laurie and Mark Skiles testified on behalf of Respondent. Both parties have filed posthearing briefs. 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 Greene County, Pennsylvania, known as the Cumberland Mine.

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2. Respondent is a large operator and the subject mine is a large mine.

3. The imposition of a penalty in this case will not affect Respondent's ability to continue in business.

4. Between August, 1980 and August, 1982, Respondent had 50 violations of 30 C.F.R. 75.1403 at the subject mine. The nature of these violations is not shown in the record. This history of prior violations is not such that a penalty otherwise appropriate should be increased because of it.

5. On August 12, 1980, a notice to Provide Safeguards was issued under 30 C.F.R. 75.1403 requiring that at the subject mine all track haulage switches shall be provided with reflectors, lights, or some other means to indicate the direction of the switch throw.

6. The subject mine utilizes battery operated haulage equipment, including 5-ton and 10-ton locomotives (carrying men or supplies), and smaller vehicles called jeeps or crickets. The locomotives have a maximum speed of about 14 miles per hour.

7. On June 16, 1982, a reflector or other suitable means to indicate the alignment of the track haulage switch was not provided at the switch at the number 9 crosscut 12 butt East 17 Face South section of the subject mine. Citation No. 1146098 was issued for a violation of the notice to provide safeguards.

8. The track in the area cited continues beyond the switch for a distance of about 200 feet. There is a battery charging station about 140 feet from the switch.

9. The violation cited was abated promptly and in good faith.

#### ISSUES

1. Was the violation of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard?

2. What is the appropriate penalty for the violation?

#### 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 condition cited by the Federal Mine Inspector on June 16, 1982, described in Finding of Fact No. 7 was a violation of the safeguard notice issued August 12, 1980, and therefore, a violation of 30 C.F.R. 75.1403.

3. The violation found above was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.

#### DISCUSSION

The hazard caused by the absence of a reflector on a switch is that the operator of a haulage vehicle might mistake the position of the switch, and by going in the "wrong" direction, jostle the occupants in the vehicle or derail the vehicle. Because low-speed haulage equipment was in use in the subject mine, the injuries would not be nearly as serious as would be the case where high speed haulage equipment was involved. This limits the weight to be accorded Government's Exhibit No. 2, the Report of a Fatal Coal Mine (Haulage) Accident, which involved high speed haulage. Nevertheless, a derailment could result in injuries of a reasonably serious nature.

Respondent contends that its haulage operators rely on observing the switches rather than the reflectors, that absent reflectors were sometimes not cited by inspectors, that reflectors were often removed by employees, and that the haulage equipment travelled so slowly that an injury was improbable even if a vehicle operator mistook the position of the switch.

With regard to the first contention, it is self-evident that a reflector or light is visible for a greater distance than the switch and its absence clearly could contribute to an accident. The second and third contentions are irrelevant to this issue. With respect to the last contention, I accept the judgment of the government inspectors that a derailment even at low speed could result in injuries to occupants of haulage cars.

4. The violation was moderately serious.

5. The condition cited was known or should have been known to Respondent. It resulted from Respondent's negligence.

6. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$100.

#### ORDER

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

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1. The Citation No. 1146098 including its designation as significant and substantial is AFFIRMED.

2. Respondent shall within 30 days of the date of this order pay the sum of \$100 for the violation found herein to have occurred.

James A. Broderick  
Administrative Law Judge