

CCASE:  
SOL (MSHA) V. U.S. STEEL MINING  
DDATE:  
19831019  
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 PROCEEDING

Docket No. PENN 83-40  
A.C. No. 36-05018-03506

v.

Cumberland Mine

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

DECISION

Appearances: David A. Pennington, 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

In the above proceeding, the Secretary seeks civil penalties for three alleged violations of mandatory safety standards. Each of the violations was originally cited as significant and substantial. However, at the hearing, the Secretary moved to have the significant and substantial designation removed from Citation No. 2011911, charging a violation of 30 C.F.R. 75.400, and from Citation No. 2011829, charging a violation of 30 C.F.R. 75.701. Pursuant to notice the case was heard in Pittsburgh, Pennsylvania, on August 30, 1983. Clarence Moats and Ferdinard Spoljarick testified on behalf of Petitioner; Charles Lemunyon and Barry Nelson testified on behalf of Respondent. Each party filed a posthearing brief. Based on the entire record and considering the contentions of the parties, I make the following decision.

FINDINGS AND CONCLUSIONS COMMON TO ALL VIOLATIONS

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 subject to the provisions of the Federal Mine Safety and Health Act of 1977 in its operation of the subject mine, and I have jurisdiction over the parties and subject matter of this proceeding.

3. The subject mine produces 1,175,000 tons of coal annually; Respondent produces approximately 15 million tons annually. Respondent is a large operator.

4. In the 24-month period prior to the issuance of the citations involved herein, 464 violations were assessed at the subject mine, 293 of which were designated significant and substantial. Seventy of these violations were of 30 C.F.R. 75.400, 51 of which were designated significant and substantial. Two violations of 30 C.F.R. 75.701 were cited during the same 24-month period. This is a moderate history of previous violations, and penalties otherwise appropriate should not be increased because of it.

5. The imposition of civil penalties in this proceeding will not affect Respondent's ability to continue in business.

6. In the case of each citation involved herein, the violation was abated promptly and in good faith.

7. Whether a cited violation is properly designated as a significant and substantial violation is per se irrelevant to a determination of the appropriate penalty to be assessed. The penalties hereinafter assessed are based on the criteria in section 110(i) of the Act.

8. The subject mine is classified as a gassy mine. It liberates in excess of 4,900,000 cubic feet of methane in a 24-hour period.

CITATION NO. 2011911

This citation, issued August 17, 1982, charges a violation of 30 C.F.R. 75.400 because of an accumulation of loose coal. The accumulation ranged between 3 and 12 inches deep, was 16 feet wide and 16 feet long. It was in by the section dumping point crusher feeder. The area was dry. The surrounding area had been rock-dusted. The section was idle and the power was off. The accumulation was not present on the previous day. The hazard presented by this condition is the possibility that it could contribute to a mine fire if one should occur. Such an event was unlikely however. I conclude that a violation was established, which was not significant and substantial. The violation was moderately serious, and the evidence does not show that it resulted from Respondent's negligence. I conclude that an appropriate penalty for this violation is \$50.

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CITATION NO. 2011827

This citation, issued August 31, 1982, charges a violation of 30 C.F.R. 75.400 because of an accumulation of loose coal and coal dust on and around the chain conveyor electric drive motor in the longwall section. The mine area was wet. The motor was dry and was hot to the touch. The motor is completely enclosed in an oblong compartment. There were vents on the side. The accumulation was on the top and partially covered and obstructed the vents on the side. I conclude this condition constituted a violation of 30 C.F.R. 75.400. The hazard presented was that the motor could heat up and cause a fire. I conclude that the violation was significant and substantial since such an occurrence was likely if the motor continued running. The violation was serious, and since it had been present for some time, was the result of Respondent's negligence. I conclude that an appropriate penalty for this violation is \$150.

CITATION NO. 2011829

This citation, issued September 2, 1982, charges a violation of 30 C.F.R. 75.701, because the metal frame of a cable skid carrying approximately 100 feet of energized cable was not grounded. The standard requires that "metallic frames, casings, and other enclosures of electric equipment that can become 'alive' through failure of insulation or by contact with energized parts shall be grounded . . . ." The cable skid involved here is used to convey the cable and to store it. It consists of a sled with two runners and a floor and pipes or standards on the side. I do not consider this to be a metallic frame or other enclosure of electric equipment covered by the standard. Therefore, I conclude that a violation was not established, and the petition will be dismissed with respect to this citation.

#### ORDER

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

1. Citation No. 2011911 is AFFIRMED but the violation was not significant and substantial.
2. Citation No. 2011827 is AFFIRMED as properly charging a significant and substantial violation.
3. Citation No. 2011829 is VACATED and the penalty petition is DISMISSED with respect to it.

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4. Respondent shall, within 30 days of the date of this decision, pay the following penalties for violations found herein to have occurred:

CITATION	PENALTY
2011911	\$ 50
2011827	150
Total	\$200

James A. Broderick  
Administrative Law Judge