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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

v.

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

CIVIL PENALTY PROCEEDING

Docket No. PENN 83-85
A.C. No. 36-03425-03515

Maple Creek No. 2 Mine

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

This case involves two citations alleging violations of mandatory safety standards at the subject mine. Pursuant to notice the case was heard in Washington, Pennsylvania, on November 30, 1983. Citation No. 2013969, issued December 2, 1982, alleged a violation of 30 C.F.R. 75.1403 because of the obstruction of a shelter hole. It was assessed at \$136. The parties submitted a proposed settlement of the violation for the payment of \$50. They agreed that the violation was properly designated as significant and substantial. Respondent's position is that the obstruction was only partial, and the inspector conceded that he could not recall whether it was complete or partial. I stated on the record that I would approve the proposed settlement for the violation in question.

The other citation was contested. Okey H. Wolfe testified on behalf of Petitioner; Joseph Hann 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. At all times pertinent to this proceeding, Respondent was the owner and operator of an underground coal mine in Washington County, Pennsylvania, known as the Maple Creek No. 2 Mine.

2. Respondent is a large operator, producing in excess of 15 million tons of coal annually.

3. In the 2 years preceding the date of the issuance of the citations involved herein, the subject mine had 496 paid violations of mandatory safety and health standards, 394 of which were designated as significant and substantial. This history is not such that penalties otherwise appropriate should be increased because of it.

4. The imposition of penalties in this case will not affect Respondent's ability to continue in business.

5. The violations involved in this case were both abated timely and in good faith.

6. On November 15, 1982, the air in the tailgate entry of the Longwall section was reversed and had become return air. A citation charging a violation of 30 C.F.R. 75.316 was issued.

7. The reversal of the air in the tailgate entry was caused when the door to a regulator which determines the amount of air coursed to the face fell down. This apparently occurred on the Saturday preceding the date of the issuance of the citation which was on a Monday.

8. The approved ventilation plan at the subject mine required that the tailgate entry be ventilated with intake air.

9. The approved ventilation plan in effect at the subject mine prior to the time involved herein called for return air in the tailgate entry. It was changed to bring a greater quantity of air back through the bleeder system.

10. As a result of the reversal of the air in the tailgate entry noted in Finding of Fact No. 7, there was less air pressure on the gob area.

11. At the time the condition referred to in Finding of Fact No. 6 was cited, 20,000 to 25,000 cfm of air was measured at the tailgate end of the longwall face.

~250

12. At the time the condition referred to in Finding of Fact No. 6 was cited, minimal methane (less than .1 percent) was detected in the longwall face area.

13. The longwall equipment has a methane monitor which is designed to deenergize the machinery in the presence of 1.5 percent methane.

14. The area where the regulator door had fallen down is normally inspected by Respondent weekly. It was scheduled to be inspected on the day the citation was issued.

15. The longwall section involved herein had been almost completely mined as of November 15, 1982. There was an extensive gob area of 2,000 feet or more behind the longwall face.

REGULATORY PROVISION

30 C.F.R. 75.316 provides as follows:
75.316 Ventilation system and methane and dust control plan.

[STATUTORY PROVISION]

A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form on or before June 28, 1970. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every 6 months.

ISSUES

1. Was the violation of 30 C.F.R. 75.316 of such a nature as could significantly and substantially contribute to 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 Maple Creek No. 2 Mine, and I have jurisdiction over the parties and the subject matter of this proceeding.

2. The condition described in Findings of Fact Nos. 6 and 7 was a violation of the approved ventilation plan and therefore of 30 C.F.R. 75.316.

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

DISCUSSION

In longwall mining, when the coal is removed from the face, the unsupported roof falls creating a gob area. Because methane is released from the gob, it is imperative that substantial air pressure be maintained on the gob to dilute the methane. After the face is advanced, subsequent roof falls may occur back in the gob area and additional methane may be released into the active workings. That such an occurrence has not happened at the subject mine does not make the occurrence unlikely. The ventilation plan was devised and approved to prevent such an occurrence. To the extent it is deviated from and pressure on the gob is diminished, the occurrence of a methane ignition becomes likely. Ignition sources include the longwall shear which causes sparks while cutting, and possible permissibility violations on equipment entering the face area. If a methane ignition or explosion occurred, it would cause serious, possibly fatal injuries. Whether a violation is significant and substantial must be determined as of the time it is cited. The fact that it would likely have been spotted and corrected as a result of Respondent's weekly inspection is irrelevant.

4. The violation was serious because of the likelihood that it would cause serious injuries to miners.

5. Since there was no coal production between the time the regulator fell off and the day the citation was issued, Respondent's negligence was slight. The deviation on the fan chart was not such as should have alerted Respondent to the ventilation problem.

6. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation found herein is \$300.

ORDER

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

1. Citation Nos. 2013969 issued December 2, 1982 and 2013923 issued November 15, 1982, including their designations as significant and substantial are AFFIRMED.

2. Respondent shall within 30 days of the date of this decision pay the following penalties:

CITATION NO.	PENALTY
2013969	\$ 50
2013923	300
Total	\$350

James A. Broderick
Administrative Law Judge