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SOL (MSHA) V. THE PITTSBURG COAL
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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.

PITTSBURG AND MIDWAY COAL
MINING CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 83-65
A.C. No. 29-00096-03506

McKinley Mine

DECISION

Appearances: Jordana W. Wilson, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas,
for Petitioner;
John A. Bachmann, Esq., Denver, Colorado, for
Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks a civil penalty for one alleged violation of a mandatory standard, that contained in 30 C.F.R. 77.202. Pursuant to notice, the case was heard in Albuquerque, New Mexico on April 17, 1984. Forester Horne and Harold Shaffer testified on behalf of Petitioner, and Petitioner called Frank Scott, a representative of Respondent as a witness. Frank Scott and Gary Cope testified on behalf of Respondent. At the conclusion of the testimony, counsel orally argued their respective positions on the record, and waived their right to file post-hearing 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 a surface coal mine in McKinney County, New Mexico, known as the McKinney Strip Mine.

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2. Respondent is a large operator.

3. Respondent's history of previous violations is small. A penalty otherwise appropriate should not be increased because of the history.

4. A penalty in this case will not have any effect on Respondent's ability to continue in business.

5. On June 9, 1983, Federal Mine Inspector Forester Horne inspected the subject mine and issued Citation No. 2071336 alleging a violation of 30 C.F.R. 77.202.

6. The tipple control room at the subject mine is on the top floor of the coal transfer building and is about 80 feet from the surface. The coal comes in the transfer building and its transferred to the stacker belt. Coal dust results from this operation.

7. The tipple control room is about 20 feet by 15 feet. It contains two panels or boxes, one known as the main crusher panel or main breaker box, and the other called the heat trace box or panel. The former is about 6 feet high and 2 feet wide. The latter is about 2 feet by 2 feet.

8. The main crusher panel contains a motor starter, with an overload relay, a transformer and numerous wires.

9. The heat trace panel contains a number of circuit breakers.

10. On June 9, 1983, there was an accumulation of coal dust in the main crusher panel and the heat trace panel. The dust on the base of each panel measured approximately one-eighth of an inch. It was black in color. There was dust on the equipment within each box although most of it had settled to the base. The dust was not in suspension.

11. The dust had come up through the floor of the room and around the conduits under the panels.

12. The condition described in Finding No. 10 was such that it would have taken 2 to 3 days to accumulate. It was apparent to visual observation.

13. In the normal operation of the main crusher panel and the heat transfer panel, no ignition source, arc or spark is created.

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14. In the event of a phase to phase or phase to ground fault within one of the panels, an ignition could be created. If an ignition occurred, it could put the dust accumulation in suspension and an explosion could result.

REGULATION

30 C.F.R. 77.202 provides as follows: "Coal dust in the air of, or in, or on the surfaces of, structures, enclosures, or other facilities shall not be allowed to exist or accumulate in dangerous amounts."

ISSUES

1. Whether Respondent allowed coal dust to exist or accumulate in dangerous amounts in the panels in the tipple control room of the subject mine on June 9, 1983?
2. If so, 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 I have jurisdiction over the parties and subject matter of this proceeding.

2. The condition described in Finding of Fact No. 10 constituted a violation of the mandatory safety standard contained in 30 C.F.R. 77.202.

DISCUSSION

The critical issue in this case is whether the coal dust accumulations existed "in dangerous amounts." There are few cases interpreting this phrase. But see Consolidation Coal Company, 3 FMSHRC 318 (1981) (ALJ); Secretary v. Co-op Mining Company, 5 FMSHRC 1041 (1983) (ALJ). Whether an accumulation is dangerous depends upon the amount of the accumulation and the existence and location of sources of ignition. The greater the concentration, the more likely it is to be put into suspension and propagate an explosion. I accept the inspector's testimony as to the amount of the accumulation and conclude that it was significant. It is true that there were no bare wires or any equipment that would cause arcing or sparking without some equipment failure or defect. But there was energized electrical facilities present and faults or failures in such facilities are common occurrences. I conclude that if the extent of the accumulation is such that it is black in color, and if potential ignition sources are present, the accumulation exists in a dangerous amount.

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3. The violation was moderately serious. An ignition was unlikely to occur, but if it did, serious injuries would result.

4. The violation resulted from Respondent's negligence. Respondent knew or should have known of its existence and cleaned it up.

5. The violation was abated promptly and in good faith.

6. Considering the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$400.

ORDER

Based upon the above findings of fact and conclusions of law, Respondent is ORDERED to pay the sum of \$400 within 30 days of the date of this decision for the violation found herein to have occurred.

James A. Broderick
Administrative Law Judge