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WETMORLAND COAL V. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

WESTMORELAND COAL COMPANY,  
CONTESTANT

v.

CONTEST PROCEEDING

Docket No. WEVA 83-141-R  
Order No. 2141231

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

Hampton No. 3 Mine

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 83-122  
Docket No. WEVA 83-123  
Docket No. WEVA 83-232  
A.C. No. 46-01283-03505  
A.C. No. 46-01283-03507  
A.C. No. 46-01283-03519

WESTMORELAND COAL COMPANY,  
RESPONDENT

Hampton No. 3 Mine

DECISION

Appearances: Kevin McCormick, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia,  
for Respondent;  
F. Thomas Rubenstein, Esq., Westmoreland Coal  
Company, Big Stone Gap, Virginia, for Contestant.

Before: Judge Fauver

Pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., Westmoreland Coal Company filed a Notice of Contest seeking review of the Secretary's Order No. 2141231, which charges a violation of 30 CFR 75.1722(a) at its Hampton No. 3 Mine on March 1, 1983. Thereafter, a Petition for Assessment of a Civil Penalty was filed by the Secretary seeking a civil penalty for the alleged violation. Those proceedings were consolidated with two other civil penalty proceedings (Docket Nos. WEVA 83-122, 83-123) and were heard at Charleston, West Virginia.

Having considered the testimony, exhibits, and the record as a whole, I find that a preponderance of the substantial, probative, and reliable evidence establishes the following:

FINDINGS OF FACT

Docket Nos. WEVA 83Ä232, 83Ä141ÄR

1. On March 1, 1983, MSHA Inspector Vaughan Gartin inspected the 6 Left 4 West section of Westmoreland's Hampton No. 3 Mine. Gartin observed that the belt tail roller was not guarded so as to prevent a person from contacting the exposed moving parts of the roller. There was a 17Äinch, unguarded area between the belt tail roller and the end of the belt line. Gartin testified that, although someone walking past the belt tail roller could come in contact with the roller or its moving parts, he was more concerned with the safety of the miners who were required to regularly grease and clean the equipment. Because of the lack of a guard on the tail roller, it was necessary for the maintenance man to reach right up to the roller with his grease gun and attach it to one of the grease fittings on each side of the roller. If any contact were made with the moving parts of the roller or belt, a miner could lose an arm, leg, or even die as a result. If a guard had been in place, a grease hose could be used, removing the necessity of coming in such close contact with the belt tail roller. There was no grease hose on the belt tail roller when Gartin observed it. A miner cleaning up coal in the unguarded area could accidentally contact the moving parts of the roller or belt with his shovel. If a guard were in place, it would prevent the worker from having the shovel come in contact with the belt or the roller.

2. When Gartin inspected the belt tail roller, the belt was energized and running.

3. Because there was no guard around the belt tail roller, Inspector Gartin issued a section 104(d)(1) order, alleging a violation of 30 CFR 75.1722(a). He alleged that the violation was "unwarrantable" because he had recently issued a citation for a similar condition in another part of the mine. Upon learning of the earlier citation, David Nelson, the Mine Superintendent, told Gartin that he knew of one other unguarded tailpiece, but that condition would be corrected before Gartin returned to the mine. However, when

Gartin returned and inspected the 6 Left 4 West section, the belt tail roller was unguarded.

4. Gartin also alleged that the condition he observed on March 1, 1983, was "significant and substantial." He testified that there was a reasonable likelihood that an injury of a serious nature could result because of the alleged violation.

5. On June 6, 1984, during the hearing, at the request of the Judge, Inspector Gartin and management personnel returned to Hampton Mine No. 3 to take measurements and photographs of a belt tail roller and coal feeder set-up. The measurements and photographs are in evidence, and show how the structures looked on June 6, 1984. Inspector Gartin testified that the situation he observed on March 1, 1983, was significantly different in two important respects. First, concerning photograph No. 1, the feeder was 37 inches from the mine floor on the day Gartin issued the order, but in the photograph, the feeder was only 23 inches from the floor. Second, regarding photographs Nos. 2 and 4, the feeder appears much closer to the tailpiece than it was on the day the order was written. On that day, Gartin measured approximately 28 inches between the coal feeder and the tailpiece. The photographs show only an 8-inch space between those structures. Gartin stated that the feeder is not normally that close to the tailpiece because the shuttle car often bumps the feeder when coal is unloaded. None of the measurements, observations or photographs taken on June 6, 1984, caused Gartin to change his opinion as to a violation and the gravity of the condition he found on March 1, 1983.

6. Another MSHA Inspector, Don Ellis, testified at the hearing. He stated that he was present when Gartin and Nelson were discussing the citation for leaving a belt tail roller unguarded on 7 Left section, and remembered that Nelson, the Mine Superintendant, said that he had an additional tail roller to be guarded. Ellis was also with Gartin when the subject order was issued. He observed the unguarded belt tail roller, and stated that a person could easily reach in and become caught in the pinch points of the belt tail roller. He also stated that the mine floor in the area was damp to wet. Ellis agreed with Inspector Gartin's opinions as to the serious nature of injuries that could result from the unguarded belt tail roller and stated that he was aware of two cases in which a miner had lost an arm in an accident involving a tail roller.

7. Two of Westmoreland's employees also testified at the hearing concerning the belt tail roller charge. Dave Nelson, the Mine Superintendant, stated that before the issuance of the citation on February 22, 1983, it was Westmoreland's practice not to provide any guard on the belt tail roller when the coal feeder was located in a straight line position. According to Nelson, the feeder provided a sufficient guard for the belt tail roller. He did not observe the belt tail roller on the day Inspector Gartin issued the subject order and he could not state what the conditions were when Gartin observed the belt tail roller on March 1, 1983. Nelson acknowledged that in the past miners have cleaned and greased the belt tail roller while the belt was moving.

8. The other Westmoreland witness, Dennis Dent, an assistant mine foreman, testified that although he was with Inspector Gartin when the order was issued, he did not know whether or not the belt tail roller was equipped with a grease hose. Nor did Dent remember exactly how far the coal feeder was from the belt tail roller. He did not take any measurements of this distance, but it was his opinion that the coal feeder provided a sufficient guard for the belt tail roller. He recognized that the structure was unguarded if a miner was greasing the roller. Without a grease hose in place, Dent explained that to grease the roller, a miner had to kneel and bend underneath the edge of the feeder; this would place the miner about 6 to 10 inches from the belt itself. Dent had seen miners under the feeder structure around the belt tail roller greasing and shoveling while the belt line was energized.

9. On November 17, 1982, MSHA Inspector Harold Baisden conducted a triple A inspection of Westmoreland's Hampton Mine No. 3. During his inspection of the 7 Left section face area, Inspector Baisden observed that there was no lock screw on the electrical panel cover inspection plate on the No. 19 shuttle car. Upon closer examination Baisden found that the plate was so loose that it could be rotated by hand. The inspection plate screws into the panel cover on the shuttle car and is supposed to be held tightly in place by a lock screw. The lock screw prevents the inspection plate from rotating loose from the shuttle car. Behind the inspection plate and panel cover are the electrical components and contact points of the shuttle car. When the controls of the shuttle are activated, the contact points behind the inspection plate move, emitting an arc or a spark. It is likely that the inspection plate on car No. 19 became loose either because of improper maintenance or excessive vibration causing the screw to fall out.

10. Hampton Mine No. 3 liberates large quantities of methane, is considered a "hot" or gassy mine, and is subject to section 103(i) spot inspections for methane. Baisden explained that when methane is liberated in the magnitude found at Hampton No. 3 (between 436,000 to 500,000 cubic feet in 24 hours), there is a high risk of an explosion in having impermissble openings of arcing electrical equipment.

11. Based on his observations of the loose panel cover inspection plate without the required lock screw, Baisden issued a section 104(a) citation alleging a violation of 30 CFR 75.503. Baisden stated that if the inspection plate fell off the shuttle car and methane or float coal dust was present in the area, the exposed electrical contractors in the panel would spark and could cause an explosion or fire.

12. Baisden found that the condition was "significant and substantial." He stated that because of the mine's history of excessive methane liberation and his own personal observations of shuttle car inspection plates falling off, it was very likely that an injury would result from this type of violation. In the event of a mine explosion or fire, up to nine miners working in the area could be killed or seriously injured.

13. An impermissible level of methane was not detected during this inspection, but conditions could change quickly, either because of a sudden change in the mine's ventilation or because of a sudden liberation of methane. Baisden noted that a shuttle car, because of its ability to travel up to 550 feet, was the most likely piece of mine equipment to tear down a ventilation curtain. At the time of the inspection the section was producing coal and the shuttle car was energized and in active use.

14. About 2 weeks later, Inspector Baisden returned to Hampton No. 3 Mine. Upon arriving at the 8 Right section, Baisden observed that the lock screw was missing on the electrical panel cover inspection plate of the No. 21 shuttle car. Baisden's notes indicate that this inspection plate, as with the one on the No. 19 shuttle car, could be turned by hand. Baisden stated that this condition would create the same type of hazard and possible injuries as the condition he observed as to No. 19 shuttle car.

15. Baisden also inspected the No. 24 shuttle car in the same 8 Right section of the mine. He found that the headlight on the shuttle car was not tight to frame. One of the two bolts which attach the headlight to the car was missing and the remaining bolt was so loose "you could turn it with your fingers." As a result, the headlight could be moved up and down a quarter to one-half an inch. Also, a ground wire was not connected to the frame. A loose headlight, not properly grounded to a shuttle car, could cause an electrical shock or external sparking. As a result of this condition, Baisden issued a section 104(a) citation alleging a violation of 30 CFR 75.503(GA6).

16. According to Inspector Baisden, if the one remaining bolt, which was already loose, came off, the headlight assembly would fall and break against the side of the shuttle car, leaving exposed, hot wires trailing against the car. Any time the wires would hit the shuttle car, there would be a spark, which could ignite any methane or dust in the area. Because of the amount of methane liberated in this mine, exposed, sparking electrical wires would present a high risk of death or serious injury as a result of an explosion, fire or smoke inhalation.

17. Inspector Baisden also found another unsafe condition on the No. 24 shuttle car. The electrical panel cover on the shuttle car had an opening in excess of .0005 inch which he measured by using a feeler gauge. The panel is designed to be explosion-proof. Because there was an opening greater than .0005 inch in the panel, methane could seep into the area where the electrical contactors arc or spark, with a high risk of a mine explosion. Baisden also found that this condition, as with the other electrical permissibility violations alleged in this docket, was "significant and substantial."

18. One witness, Robert Damron, testified on behalf of Westmoreland. Damron did not travel with Baisden during his inspections; nor did he see any of the shuttle cars involved in these proceedings either before or after the citations were issued. Damron was not in a position to refute any of the findings or observations made by Inspector Baisden. Instead, Damron testified generally as to the conditions of the mine when the citations were issued, how certain mining equipment operates and how it would be unlikely that the conditions observed by Baisden could lead to any serious accidents. Because shuttle cars do not have methane monitors, an operator could drive into a pocket of methane without

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prior warning. Damron acknowledged that if a headlight was not properly grounded to the frame of a shuttle car, and the headlight became loose and fell off, arcing and sparking would be likely.

Docket No. WEVA 83A123

19. On December 6, 1982, Inspector Dennis Cook observed the No. 1 South belt idler roller and take-up. He found that the mechanical guard which was provided for the belt idler roller and take-up was partially torn down or completely removed. Although there was evidence that roof bolts had been welded across the front of the roller, several of the bolts, which acted as a guard, had been knocked off by a hammer or some other instrument. The screening, intended to guard the tight side of the belt roller, had also been taken off and placed up against the rib. Inspector Cook believed that the guards, which were lying three to four feet from the take-up roller, were removed for maintenance or cleanup work and never replaced.

20. The belt is threaded over and around the idler roller, which is between 12 and 16 inches in diameter. Normally, fencing material or wire mesh is placed around the belt idler roller and take-up to prevent persons from accidentally falling into or reaching into the moving belt or roller "pinch points." A person coming in contact with the pinch points of the roller could be severely injured or killed.

21. Based on his observations that the mechanical guards on the energized 1 South belt idler roller and take-up had been removed on the back and the side, Inspector Cook recommended (see Finding 29, below) a section 104(a) citation alleging a violation of 30 CFR 75.1722(b). Cook stated that normally one employee works around the belt idler roller, and that this condition could reasonably lead to a serious injury. If someone did get a limb caught in the machinery, that person would be unable to deenergize the belt. Even if another person, probably in an adjacent entry, saw or heard the accident, it would take 15 or 20 minutes to extricate the injured person from the belt idler roller and transport him to the surface. Based on his opinion of a reasonable likelihood of an accident and the seriousness of any resulting injury, Cook alleged that this violation was "significant and substantial."

22. Cook also alleged that the operator's negligence in allowing this condition to exist was high. He stated that the area around the belt idler roller is required to be inspected each production shift by a certified mine examiner, and that the absence of a mechanical guard was so obvious that it should have been detected during such inspection. Also, on the day the citation was issued, three or four miners were working in the area performing clean-up work, along with a management representative. Cook believed that these individuals should have seen the removed guards. The condition was abated by replacing the guards that were lying against the rib.

23. In his inspection on December 6, 1982, Inspector Cook also observed float coal dust on top of rock dusted surfaces around the No. 1 South belt head and at the slope belt tailpiece. The area around the South belt head area was 20 feet wide and 80 to 100 feet long. The area, which is the main discharge point for all the coal that is produced at the mine, was black with dust. When the coal comes off the belt conveyor it is dumped into a hopper, generating float coal dust. Based on his visual observations of the dust accumulation, Cook estimated that the float coal dust had been there at least one shift, possibly several shifts.

24. The area around the slope belt tailpiece was also described by Inspector Cook. The width of the entry ranged from 18 to 40 feet, and the height extended from 8 to 18 feet. The dust was black; there was no question in Cook's mind that it was coal. According to Cook, the accumulations around the slope belt tailpiece had been there at least one shift, possibly longer. Because both areas cited by Cook are required to be inspected on a shift basis and a miner is stationed in close proximity, Cook believed that Westmoreland knew or should have known about the accumulation of float coal dust in these areas. Based on his observations of these conditions Cook recommended a section 104(a) citation alleging a violation of 30 CFR 75.400.

25. The float coal dust was accumulated in an area where several energized power cables, starter boxes and other electrical components were located. This combination created a dangerous condition.

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26. On the next day, December 7, 1982, Inspector Cook returned to Hampton Mine No. 3. While inspecting the No. 1 South belt starter box, Cook opened the doors on the box and measured 1/16 of an inch of float coal dust in the starter box compartment itself and saw some float coal dust on the contactors in the box. He estimated that it took at least one week for the coal dust to accumulate in the starter box.

27. The starter box is 4 feet long, 24 inches wide and 24 to 36 inches high. Several energized electrical power cables, carrying up to 480 volts, enter the starter box and energize the belt head. The box contains switches and relays, which regularly arc and spark when the electrical cycle is interrupted. Float coal dust was observed on these components.

28. Sparks emitted by the contactors would be sufficient to ignite float coal dust, causing a violent explosion or fire. If a fire developed from the ignition, the heat of the flames could further weaken the already poor roof in this area, and possibly cause a roof fall. The presence of methane would intensify any mine explosion or fire. As stated above, this mine liberates substantial quantities of methane. When Cook observed the condition, the belt starter box was energized, the belt line was working and there were at least two employees in the immediate area. An accident producing serious injuries would be reasonably likely. Based on all of these factors, Cook recommended a section 104(a) citation alleging a violation of 30 CFR 75.500.

29. Because of a prior break in Cook's service as a MSHA inspector, and the resulting administrative delays in processing his personnel papers, Cook did not have his "authorized representative" card with him at the time of the actual inspections in these proceedings. As a result, he did not sign the citations; instead, another inspector, Harold Baisden, signed and confirmed the citations recommended by Cook.

30. Two of Westmoreland's employees testified at the hearing regarding these citations. Jackie Roberts, a bin operator, testified generally as to the conditions of the mine where the citations were issued, and what type of maintenance is generally required on some of the equipment in the area. However, Roberts did not travel with Inspector Cook during his inspection and could not remember what the conditions were like in the mine when the citations were issued. Roberts was not in a position to refute any of the findings or observations made by Inspector Cook. Roberts stated that if the area where the citations were issued was not rock dusted for two or three days, it would get "awful black" with coal dust from the dumping point. Roberts also

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stated that as a result of poor roof conditions in this area, there have been roof fatalities as recent as a year or two ago. Roberts stated that one of Westmoreland's employees, Ralph Karas, lost an arm while he was working on a belt line.

31. The other Westmoreland witness on this charge was Robert Damron. Like with Jackie Roberts, Damron did not have personal knowledge of the conditions cited by inspector Cook. Instead, he testified as to general conditions and practices at the mine which may or may not have occurred or been followed on December 6, 1982: nor did he have an opportunity to observe the float coal dust accumulations in the entire belt slope area described by Inspector Cook.

32. Westmoreland is a large operator. Hampton No. 3 Mine is a large coal mine. In the 24-month period before the order and citations at issue, Westmoreland paid \$35,751 in civil penalties for 216 violations at Hampton No. 3 Mine.

#### DISCUSSION WITH FURTHER FINDINGS

Docket Nos. WEVA 83A232 and 83A141AR

I find that Westmoreland violated 30 CFR 75.1722(a) by failing to provide a guard on the tail roller. The condition presented a substantial and significant hazard to miners working around the tail roller. The violation was also unwarrantable as alleged in Order No. 2141231, in that the operator knew or should have known of the violative condition before the Federal inspection.

Under the Act (section 110(i)) six criteria must be considered in assessing a civil penalty. In this case, the parties have stipulated to four of the six criteria, that is, the size of the operator (large) and the mine (large), whether the proposed civil penalties will adversely affect the operator's ability to continue in business (no), whether the conditions cited were timely abated in good faith (yes), and the operator's compliance history (216 paid violations amounting to \$35,751 at Hampton Mine No. 3).

The other factors are the gravity and negligence, if any, involved in the violations.

I find that this violation was serious because of the risk of serious injury to miners who might have come in contact with the tail roller because of the absence of a guard. I also find that the violation was due to negligence of the operator, because the violation could have been detected and prevented by the exercise of reasonable care.

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In considering the statutory criteria for assessing penalties, I find that an appropriate civil penalty for this violation is \$750.

The Secretary's order should be affirmed.

Docket No. 83Ä122

I find that Westmoreland violated 30 CFR 75.503 as charged in Citations Nos. 2035981, 2035985, and 2035987 by failing to maintain shuttle cars 19 and 21 in permissible condition, because the inspection plates were loose and not secured by lock screws, and by failing to maintain shuttle car 24 in permissible condition, because the headlight was very loose and not properly grounded and there was an impermissible opening in the electrical panel of that car.

These violations presented a serious risk of injury, even death, because of hazards of a methane or float coal dust explosion or fire. The violations were due to negligence of the operator, because they could have been detected and corrected by the exercise of reasonable care.

In considering the statutory criteria for civil penalties, I find that appropriate civil penalties for these violations are: Citation No. 2035981--\$276, Citation No. 2035985--\$329, and Citation No. 2035987--\$329.

Docket No. WEVA 83Ä123

I find that Westmoreland violated 30 CFR 75.400 as charged in Citations Nos. 2035998 and 2035999.

Inspector Cook testified that he observed float coal dust accumulations around the No. 1 South belt head, the slope tailpiece and in the energized belt starter box, the dust he observed was black, and there was no doubt in his mine that it was float coal dust.

The operator did not offer any persuasive evidence to refute Cook's observations.

The violations presented a serious risk of injury to miners because of the danger of float coal dust and possible sources of ignition in the affected areas.

The violations were due to negligence of the operator, because they could have been prevented by the exercise of reasonable care.

Considering the criteria for civil penalties, I find that an appropriate civil penalty for each violation is \$294.

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I find a violation of 30 CFR 75.1722(b) as charged in Citation 2035997. Inspector Cook testified without contradiction that the guard for the belt idler roller had been removed and left on the mine floor. He estimated that the guard had been taken off at least two, possibly more, production shifts earlier.

This violation presented a serious risk of injury and was due to negligence attributable to the operator.

Considering the criteria for civil penalties, I find that an appropriate penalty for this violation is \$241.

At the hearing I approved settlement of Citation 2140562 by assessing a civil penalty of \$100 and settlement of Citation 2140566 by assessing a civil penalty of \$371.

#### CONCLUSIONS OF LAW

1. Westmoreland violated safety standards as charged in Order No. 2141231 and in Citations Nos. 2035981, 2035985, 2035987, 2035997, 2035998, and 2035999.

2. Settlements of Citations Nos. 2140562 and 2140566, as stated in the Transcript, page 252, are APPROVED.

3. Westmoreland is ASSESSED the civil penalties specified in the Discussion part of this Decision.

#### ORDER

WHEREFORE IT IS ORDERED that:

1. Westmoreland shall pay the above civil penalties in the total amount of \$2,984 within 30 days of this Decision.

2. Order No. 2141231 is AFFIRMED.

William Fauver  
Administrative Law Judge