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SOL (MSHA) V. PYRO 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. KENT 84-89  
A.C. No. 15-10339-03526

v.

Pyro No. 11 Mine

PYRO MINING COMPANY,  
RESPONDENT

Appearances: Darryl A. Stewart, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for Petitioner;  
William Craft, Assistant Director of Safety,  
Pyro Mining Company, Sturgis, Kentucky,  
for Respondent.

DECISION

Before: Judge Fauver

The Secretary of Labor brought this action for civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 891, et seq. The case was heard in Lexington, Kentucky. Having considered the evidence and the record as a whole, I find that a preponderance of the substantial, reliable, and probative evidence establishes the following:

FINDINGS OF FACT

1. Respondent's Pyro No. 11 Mine is an underground coal mine used in connection with its Pyro No. 9 Mine to produce coal for sale or use in or affecting interstate commerce.

2. The parties have stipulated that Pyro Mining Company is subject to the provisions of the Act, that the Pyro No. 11 Mine is part of a division that produces approximately 1.5 million tons of coal annually, that Pyro Mining Company's previous history of violations would not be a significant factor in this case, that the assessment of the penalties in this case would not impose a financial hardship on Respondent's ability to remain in business, and that Respondent acted in good faith in abating the alleged violations cited in the citations involved.

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3. On December 7, 1983, MSHA Inspector Paul O. Lee inspected part of Respondent's Pyro No. 11 Mine and issued Citation No. 2217258, alleging a violation of 30 C.F.R. 75.507, which provides:

Except where permissible power connection units are used, all power-connection points outby the last open crosscut shall be in intake air.

Inspector Lee issued the citation on the ground that return air, air that had been used to ventilate the active workings of Pyro No. 9 Mine, was allowed to mix with neutral air flowing through a track entry in Pyro No. 11 Mine where there were nonpermissible motors on the conveyor belt drives. By using an anemometer, Inspector Lee determined that approximately 11,000 cfm of return air was being dumped into neutral air at the first main east entry overcast where it intersects with the second north main entry. Inspector Lee determined that the return air was mixing with the neutral air in part because Respondent had removed stoppings and had failed to replace them.

4. On December 14, 1983, MSHA Inspector Paul O. Lee inspected part of Pyro No. 11 Mine and issued Citation No. 2338301, alleging a violation of 30 C.F.R. 75.507.

Inspector Lee issued the citation on the ground that return air, air that had been used to ventilate the active workings of Pyro No. 9 Mine, was allowed to mix with neutral air flowing through a track entry in Pyro No. 11, where there was nonpermissible electrical equipment, i.e. a battery charger and electric water pumps. Inspector Lee used an anemometer in determining that approximately 11,500 cfm of return air was being dumped into neutral air at a damaged overcast at the first east panel off the first submain north entry.

DISCUSSION WITH  
FURTHER FINDINGS

I find that the Secretary proved each charge by a preponderance of the evidence. Inspector Lee was justified

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in relying upon Respondent's mine maps and his site inspections of Pyro No. 11 Mine in determining the two violations charged. He was not required to go into Pyro No. 9 Mine to verify the active workings and return air course shown on the maps for No. 9 Mine.

Both violations were due to negligence, because they could have been avoided by the exercise of reasonable care. They were serious violations because of the risk of a methane build-up and explosion by methane contact with nonpermissible equipment.

Considering the criteria for assessing a civil penalty under section 110(i) of the Act, I find that an appropriate civil penalty for each violation is \$260.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.

2. Respondent violated 30 C.F.R. 75.507 as charged in Citations Nos. 2217258 (December 7, 1983) and 2338301 (December 14, 1983) and is ASSESSED a civil penalty of \$260 for each violation.

#### ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay civil penalties in the total amount of \$520 within 30 days of this Decision.

William Fauver  
Administrative Law Judge