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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 85-98
A.C. No. 15-13881-03555

v.

Pyro No. 9 Slope
William Station

PYRO MINING COMPANY,
RESPONDENT

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Petitioner; Bruce Hill, Director of Safety
and Training, Pyro Mining Company, Sturgis, Kentucky,
for the Respondent.

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). Petitioner seeks a civil penalty assessment in the amount of \$206 against the respondent for an alleged violation of mandatory safety standard 30 C.F.R. 75.1103-4(a)(1). The respondent filed a timely answer contesting the alleged violation, and a hearing was convened in Evansville, Indiana, on December 3, 1985. The parties waived the filing of posthearing briefs. However, I have considered the oral arguments made by the parties during the hearing in the adjudication of this case.

Issues

The issues presented in this case are (1) whether the conditions or practices cited by the inspector constitute a violation of the cited mandatory health standard, and (2) the appropriate civil penalty to be assessed for the violation,

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taking into account the statutory civil penalty criteria found in section 110(i) of the Act.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub.L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 20 C.F.R. 2700.1 et seq.

Stipulations

The parties stipulated that at all times relevant to this case, the overall coal production for the respondent operating company was 5,020,840 tons, and that the production for the Pyro No. 9 William Station Mine was 2,041,542 tons.

The parties stipulated that the payment of the assessed civil penalty will not adversely affect the respondent's ability to continue in business. They also stipulated that the violation was abated in good faith by the respondent (Tr. 26).

Discussion

Section 104(a) "S & S" Citation No. 2505477, issued on January 7, 1985, cites a violation of 30 C.F.R. 75.1103-4(a)(1), and the condition or practice is stated as follows:

A violation was observed on the No. 3 unit, I.D. 003 in that the automatic fire sensor line was not installed the entire length of the beltline going to the unit 3 tailpiece. The automatic fire sensor line was installed up to within two crosscuts outby the tailpiece (140 ft. from the end of the sensor line to the tailpiece).

Petitioner's Testimony

MSHA Inspector George Siria testified as to his background and experience, and he identified exhibit P-7 as a copy of the citation issued by Inspector Frank R. Gerovac on January 7, 1985. Mr. Siria stated that Mr. Gerovac was relatively new in the area and was not familiar with the mine or MSHA's policies and that he accompanied Mr. Gerovac in order

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to be available should any problems arise. He confirmed that Mr. Gerovac has retired for health reasons and is presently residing somewhere in Michigan (Tr. 33-41).

Mr. Siria confirmed that he also conducted an inspection of the mine on January 7, 1985, while he was with Mr. Gerovac, and that he issued a citation for some violative conditions. He identified exhibit P-5 as an official copy of an MSHA inspection report which indicates that he and Mr. Gerovac inspected the mine and issued citations. He confirmed that the report verifies that Mr. Gerovac issued the citation for a violation of section 75.1103-4(a)(1) after finding that the fire sensor line had not been installed for the entire length of the beltline on the number three unit (Tr. 43).

Mr. Siria stated that the hazard associated with the violation concerns a lack of warning in the event of a fire on the beltline. The fire sensors are activated by a sensing head located at 125-foot distances, and they are required to alert miners in the event of a fire on the conveyor belt. The sensors are interconnected with the warning device boxes which sound an alarm in the event of a fire. Possible sources of ignition along the beltline would be loose coal, coal dust, and float coal dust (Tr. 45-57).

On cross-examination, Mr. Siria confirmed that Mr. Gerovac's prior experience was in metal and non-metal inspections, and he did not know the extent of his experience in underground coal mining. He confirmed that he did not travel the belt with Mr. Gerovac during his inspection, and petitioner's counsel stipulated that Mr. Gerovac did not issue any citations for coal spillage on the beltline during his inspection (Tr. 49). Counsel also stipulated that no citations were issued for lack of water or rock dust on the beltline (Tr. 52-53).

Mr. Siria did not know when the belt was last added on the unit in question, and could not state whether it was installed within 24 hours of the issuance of the citation by Mr. Gerovac (Tr. 54). When asked to explain his understanding of an exception found in section 75.1103-4(a)(1), Mr. Siria responded as follows at (Tr. 54-56):

Q. Based on what you just read, if the belt--hypothetically speaking--if the belt had been put on in the past twenty-four hours, would there be a citation associated with what was written.

A. Really ... you can't always go by the book ...

MR. HILL: Just tell me yes or no.

WITNESS: Repeat the question.

Q. If, according to the standard, the belt had been put on within twenty-four hours of the citation and it was within a hundred and twenty-five feet, would there be a violation.

A. I didn't make the belt.

BY THE COURT: No, he wants you to assume that it was. In other words, what he's trying to establish is whether or not this section would apply in this case given the assertion that ... the argument that twenty-four hours hadn't elapsed yet and, therefore, they weren't required to have the belt sensors at the places where Mr. Gerovac thought they should be.

WITNESS: Your Honor, it's hard to answer that question yes or no. There's always extenuating circumstances.

BY THE COURT: All right, you can explain whatever ... go ahead and explain that.

A. If the ... if I felt that there was a danger with the beltline being back, with the fire sensor line being a ... ah, more than a hundred twenty-five outby ... really, I mean, I'm not meaning argumentative and I'm not trying to be smart, but I wouldn't care when the belt had been moved if I thought there was a danger to a coal miner, I would require the belt be ... the sensing line to be moved up if there was any ... this is a dust problem area and, like I previously stated, ...

Q. Based on what has already been stipulated, do you know of any problems in that area that would have dictated that to be considered a problem area to the point a citation would be written beyond the standard of the law.

A. I'm sure if ... with Mr. Gerovac's observation and his judgment, if there had been another violation of the standard, he would have issued additional citations.

Q. So if there would have been additional problems that would have warranted writing the citations above and beyond the standard of the law, he would have also written citations to correspond with that.

A. In his judgment.

Q. And within his judgment, he did not.

A. We don't see them.

Mr. Siria stated that the presence of coal dust mixed with fire clay on the unit did not present an ignition problem, and even though he independently found an exposed cable wire in another area during his inspection, any fire resulting from that condition would not be detected by the required sensor in question in the area cited by Mr. Gerovac because the cable was too far from the cited belt (Tr. 58). Mr. Siria found no excessive levels of methane on the unit (Tr. 60), and he confirmed that he did not personally observe the conditions cited by Mr. Gerovac (Tr. 61).

Respondent's Testimony

Ray Taylor, respondent's chief electrician testified that his responsibilities include the operation of the beltlines at the mine and to insure that they are properly installed. He was on the unit on the day of Mr. Gerovac's inspection. He stated that the belt extension was installed during the 2:00 a.m. shift on January 6th, and it was moved two or three crosscuts for a distance of approximately 120 feet. The fire sensors were installed by his crew during the day shift on January 7th within 24 hours of the extension and installation of the belt, and he believed they were installed before 4:00 p.m. that day (Tr. 62-70).

Mr. Taylor stated that based on his interpretation of the regulation, once a belt extension is completed, the respondent has 24 hours within which to install the sensors. In his view, regardless of the number of feet that the belt is extended, the respondent would still have 24 hours within which to advance and install the sensor line. He confirmed

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that he was present when the mechanic arrived to install the sensor, but was not present when he completed the job (Tr. 71-72). He confirmed that the first sensor line was installed within 24 hours of the installation of the belt (Tr. 74). The belt extension was installed by the morning of January 7, and the installation of the sensor line began before he left the unit that day, and the citation was abated on January 8 (Tr. 75).

Mr. Taylor described the fire sensor system and the installation procedures, and he confirmed that in the event of a malfunction of one of the sensors, the entire system will malfunction and a warning light or alarm will indicate that the faulty sensor needs to be repaired (Tr. 103-104).

Arguments Presented by the Parties

Petitioner's interpretation of the standard is that it requires that belt sensors be installed at the beginning and end of a beltline regardless of its length. Petitioner maintains that the regulatory exception allowing 24 hours for the installation of sensors only applies to the distances between the beginning and end of a beltline and does not apply to the requirement that a sensor be at the end of the beltline regardless of its distance. Assuming a beltline is 375 feet long, petitioner argued that a sensor must be installed at the beginning and end at the time the belt or any extension is installed, and that the remaining sensors in between the beginning and end may be installed within 24 hours (Tr. 84, 92, 128-129).

Petitioner argued that since there is electrical power at the belt tailpiece, and since shuttle cars are operating in that area, there is a likelihood of coal accumulations and a potential fire at that location, and the rationale of an interpretation that a sensor is required at the end of the belt is a reasonable one (Tr. 96).

Assuming that the regulatory exception is applicable to the end of the belt line, which had been extended for a distance of 140 feet, petitioner concedes that the respondent would be allowed 24 hours within which to install a sensor at the 125 foot location (Tr. 98). Petitioner agrees that the inspector was apparently concerned about the lack of a sensor at the end of the 140 foot extended belt, and it took the position that subparagraph (1) of the regulation required a sensor at the end notwithstanding the 24 hour exception found in subparagraph (3) (Tr. 99).

Inspector Siria explained that the respondent's beltlines begin as belt headers and extend to the tailpiece. As the belt is further extended, the tailpiece is advanced in an incremental series of headers and tailpieces (Tr. 108-109). Respondent explained that the belt is advanced by its production personnel, and once this is done, its maintenance personnel will advance the fire sensor line (Tr. 116-117).

The respondent explained that its belts are advanced for distances of 120, 180, or 210 feet at a time depending on the crosscut centers. The fire sensors are purchased in 500 foot rolls, with sensors at 75 foot intervals. The sensors are premeasured, and the sensor line is uncoiled and advanced for installation after the belt has been advanced (Tr. 103). Assuming the belt is advanced 140 feet, as it was in this case, the sensors would be advanced for this same distance up to the tailpiece end of the extended belt, and respondent believes that the regulatory exception permits a 24-hour period for this to be done (Tr. 87).

The respondent does not dispute the fact that the fire sensor line was not immediately advanced for 140 feet at the time the belt was extended that distance. However, respondent takes the position that when the distance from the tailpiece to the loading point reaches 125 feet, it has 24 hours to advance the sensor heads to the end loading point (Tr. 127). On the facts of this case, the respondent points out that Inspector Gerovac arrived at the scene four hours after the belt had been extended, and even though it had been extended for more than 125 feet, the respondent believes that it was not required to immediately advance the fire sensor line because of the 24 hour "grace period" exception found in subparagraph (3) of section 75.1103-4(a) (Tr. 85-85; 101).

The respondent points out that the fire sensor line had been extended up to the point where the belt extension started, and that automatic fire suppression devices were located at the tailpiece feeders (Tr. 113). In response to the petitioner's assertion that the regulatory exception applies only to the 125 foot belt increments, or the points between the beginning and end, respondent points out that requiring the immediate installation of a sensor at the end of the belt while allowing 24 hours to install one in the middle makes no sense because the sensors operate in sequence and not independently of each other. A sensor located at the end of a belt will not operate until such time as the middle one is installed (Tr. 94).

Inspector Siria was recalled as the court's witness and he was asked to explain his interpretation of the exception found in section 75.1103Ä4(a)(1). He stated that he personally preferred the application of subsection (1) which requires sensors at the "beginning and end of each belt flight," and that he did not fully understand the application of the exception found in subparagraph (3) (Tr. 106). When asked to give an opinion as to what the standard writers had in mind when the regulation was promulgated, he responded "I don't know what this guy was thinking about when he wrote that" (Tr. 107Ä108).

Mr. Siria candidly conceded that accepting the petitioner's argument that the 24 hour exception applies only to the sensors between the beginning and end of a beltline could result in a 500 foot belt without fire sensors between the beginning and end of the belt over a 24Ähour period. When asked to explain the logic of requiring an immediate sensor at the end of the belt and not in the middle, he responded "because that's the most likely place for a fire to begin, at the tailpiece" (Tr. 108).

When asked for his opinion about the theory of the respective positions of the parties in this case, Mr. Siria responded "I think they're both right" (Tr. 110), and he explained further as follows (Tr. 113Ä114):

I think you have twenty-four hours to get the sensing head if it's in excess of a hundred and twenty-five feet. But I think the sensing are supposed to be from the beginning to the end of the belt like it states in the first part of the paragraph. But like the guy ... like I said, maybe the guy that wrote this said ... when they extend their sensing wire, they're automatically on a hundred and twenty-five, they don't have to put them on. Ray said now they're seventy-five. So they don't have to add these sensing heads. But I'm sure that when the law first came into effect, they put a line in and they added sensing heads later. But I think, like the first paragraph, like Tom, Mr. Grooms said, it should be from the beginning to the end. And I think ... like Bruce says that it should be ... they should have twenty-four hours to put that in, any in between. Now, this would be an exception to them because they don't have to

put them in; they're already built in, they come built in.

Findings and Conclusions

Fact of Violation

The respondent is charged with a violation of mandatory safety standard 30 C.F.R. 75.1103-4(a)(1), which provides as follows:

(a) Automatic fire sensor and warning device systems shall provide identification of fire within each belt flight (each belt unit operated by a belt drive).

(1) Where used, sensors responding to temperature rise at a point (point-type sensors) shall be located at or above the elevation of the top belt, and installed at the beginning and end of each belt flight, at the belt drive, and in increments along each belt flight so that the maximum distance between sensors does not exceed 125 feet, except as provided in paragraph (a)(3) of this section. (Emphasis added.)

The exception referred to in paragraph (a)(1), provides in relevant part as follows:

(3) When the distance from the tailpiece at loading points to the first outby sensor reaches 125 feet when point-type sensors are used, such sensors shall be installed and put in operation within 24 production shift hours after the distance of 125 feet is reached.
* * * (Emphasis added.)

The parties agreed that the respondent's belt fire sensors are point-type sensors. The term "flight" as applied to a belt system is defined by the Dictionary of Mining, Mineral, and Related Terms, U.S. Department of the Interior, 1968 Edition as "a term sometimes applied to one conveyor in a tandem series."

Inspector Gerovac noted in his citation that the required fire sensor line in question had been installed up to the flight connection point in question at the time he viewed the cited condition. The parties assumed and agreed that the

respondent was in compliance up to the point of the newly installed belt flight connection, and that the sensor line up to that point was in place and functional (Tr. 97). They also agreed that at that point in time the newly extended belt extension or "flight" had been extended in excess of 125 feet for a distance of 140 feet and the fire sensor line had not been immediately extended to the end of the newly advanced belt flight. The termination notice issued by Inspector Gerovac states that the violation was abated by extending the fire sensor line to the belt tailpiece. Since the fire sensor line is one that is simply uncoiled and advanced as the belt flight is advanced, I assume that the respondent uncoiled it and extended it for 140 feet to the end of the newly extended tailpiece and loading point location to achieve abatement and compliance.

It seems to me that the starting point for the application of the regulatory language found in section 75.1103Å4(a) is the newly installed belt flight connection location. According to the credible testimony the belt flight was installed on the immediate shift prior to the inspector's arrival, and it had been in place some 4 hours prior to his arrival. The parties agreed that the fire sensor line was in place up to and including the belt flight connection location, but disagree as to what was required from that point on. The petitioner relies on the language found in paragraph (1) which requires the installation of sensors at the beginning and end of each belt flight and in increments along each belt flight so that the maximum distance between sensors does not exceed 125 feet. The petitioner's interpretation of this regulatory language is that it imposes a requirement that sensors be installed at the beginning and end of each belt flight. Since there was no sensor at the end of the newly extended belt flight in question, petitioner maintains that a violation has been established.

With regard to the application of the 24 hour exception found in paragraph (3), petitioner's interpretation is that it only comes into play when the extended belt flight tailpiece reaches a point 125 feet from the last outby sensor at the flight connecting point. In the instant case, petitioner agrees that the respondent had 24 hours from the time the belt flight in question was installed to advance the fire sensor 125 feet in order to comply with the requirement that sensors be located at distances not to exceed 125 feet, but insists that the sensor at the end of the 140 foot belt flight should have been installed immediately upon completion of the installation of the advanced belt flight. In short, the petitioner suggests that the sensor line should have been

extended up to and including the end of the 140 flight extension when that work was completed.

The respondent's interpretation of the regulatory language found in paragraphs (1) and (3) of section 75.1103-4(a), is that the 24 hour exception applies to the sensors at the beginning and end of a belt flight as well as the sensors which are required at intervals of 125 feet along the belt flight. Respondent's representative conceded that when the belt was advanced 140 feet, sensor's were required at the beginning and end of that belt flight. However, he took the position that the fire sensor line would be advanced to the beginning of the flight when the belt is advanced, and that the respondent would still have 24 hours within which to advance the line to the end of the flight (Tr. 87-88). Respondent's representative argued that section 75.1103-4 does not impose any time period within which the sensors must be located at the beginning and end of a belt flight, and he asserted that since the regulation does not differentiate as to when sensors must be installed at the beginning and end of a belt flight, the respondent is free to rely on the 24 hour for the installation of sensors at both locations (Tr. 99-100). His interpretation of the exception noted in paragraph (1) is that it also applies to the end of a belt flight (Tr. 101).

Respondent argues that requiring a sensor at the end of the belt flight immediately upon the completion of the installation of the belt flight, while permitting 24 hours to install one at the beginning, is inconsistent because the beginning and intervening 125-foot locations will be without fire sensor protection for a 24-hour period, while the end of the belt will be immediately protected. Petitioner maintains that requiring a sensor at the end immediately within the completion of the belt flight will insure fire protection at the critical tailpiece loading point where equipment is operating and coal accumulations or spillage are most likely to occur. Since the remaining portion of the belt will be protected with sensors located at intervals of 125 feet, petitioner maintains that requiring the immediate location of the sensor at the end of the belt will simply insure that the entire belt flight has fire sensing devices when it is installed and operational.

Petitioner maintains that the acceptance of the respondent's interpretation of the standard will result in the use of an unprotected belt flight during coal production. Since the 24 hour exception applies to production hours, petitioner

points out that the respondent could be operating a belt during two or more production shifts with no fire sensor at the end loading point, and that the standard was never intended to be interpreted in such a way as to permit such a hazard to exist.

The respondent asserts that allowing 24 hours to install intervening sensors on a belt flight while at the same time insisting that a sensor be immediately installed at the end when the flight is installed is illogical because its belt sensors operate in sequence or in tandem much like a "string of Christmas lights," and that in the event one sensor malfunctions, the entire sensor system will not work. In support of this claim, the respondent relies on the testimony of its Chief Electrician Ray Taylor.

Mr. Taylor's testimony does not support the respondent's suggestion that one malfunctioning sensor along a belt flight will render the entire sensor system useless or cause it to shut down. Mr. Taylor testified that if one sensing device should fail at one location along a belt flight it will trigger an alarm or signal to indicate that there is a malfunction or fault in the system which needs attention. He specifically stated that one malfunctioning sensor will not shut down the entire sensing apparatus, but will simply give an alert that repairs are required (Tr. 103-104). The only malfunction which will shut the entire system down is one caused by the cutting of the sensing cable itself (Tr. 104).

Paragraph (1) states that where used, sensors must be located at the beginning and end of a belt flight. This language is clear and unequivocal. In my view, once a belt flight is installed sensors must be located at the beginning and end of the belt flight regardless of the length of the flight. If the flight is 100 feet long, two sensors are required; one at the beginning and one at the end. If the flight is 150 feet long, three sensors are required; one at the beginning, one at the end, and one at an intervening location not in excess of 125 feet from the first one. As additional belt flights are added, the requirements for additional sensors must be determined by using the last installed sensor at the new tailpiece location as a new starting reference point.

With regard to the exception found in paragraph (3), I agree with the petitioner's interpretation that it applies only to the location of sensors which must be located at intervening locations along a belt flight not in excess of

125 feet of the last installed sensor. In my view, paragraph (1) imposes two separate requirements for the installation of fire sensors along a belt flight. The first requirement is that sensors be located at the beginning and end of a belt flight, and a second requirement is that sensors be located in increments and distances not to exceed 125 feet. The regulatory exception in my view modifies the requirements for locating sensors at locations which exceed 125 feet, and does not affect the requirement that they be at the beginning and end of a belt flight. The first sentence of the exception found in paragraph (3) provides that when the distance from a belt tailpiece to the first outby sensor reaches 125 feet such sensors shall be installed and put in operation within 24 production shift hours after the 125 feet distance is reached. Thus, I conclude that the phrase "such sensors" only applies to the sensors which are required at 125 foot intervals along a belt flight, and not to those required at the beginning and end of the flight.

On the facts of this case, I conclude and find that the petitioner's interpretation and application of the standard in question is correct, and I reject the interpretation advanced by the respondent. I conclude and find that a sensor was required at the point where the cited belt flight reached a distance of 125 feet as well as at the end of the flight. Since the flight had been installed 4 hours prior to the arrival of the inspector on the scene, I conclude that the exception found in paragraph (3) of section 75.1103Å4 allowed the respondent an additional 20 production shift hours within which to advance and install a sensor at the 125 foot distance, but did not allow the respondent any additional time within which to advance and install a sensor at the end of the flight. I conclude that a sensor at the end of the belt flight was required immediately upon the installation of the operational belt flight. Since the belt flight was in use and operational at the time the citation was issued, and since there is no dispute that a sensor was not located at the end of the flight, I conclude that a violation has been established and the citation IS AFFIRMED.

History of Prior Violations

Exhibit PÅ1 is a computer print-out summarizing the respondent's compliance record for the period January 1, 1983 through January 6, 1985. That record reflects that the respondent paid civil penalty assessments totalling \$75,033 for 800 violations, 29 of which were for violations of the fire sensor requirements found in 30 C.F.R. 75.1103, 75.1103Å1, 75.1103Å4, and 75.1103Å5. Taking into account the

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size of the respondent's mining operations, I do not consider the respondent's history of compliance to be a particularly good one, and I have considered this in the civil penalty assessment made for the violation in question in this case.

Size of Business and Effect of Civil Penalties on the Respondent's Ability to Continue in Business

The parties have stipulated as to the scope of the respondent's mining operations and agreed that the payment of civil penalty will not adversely affect the respondent's ability to continue in business. I adopt these agreements as my findings on these issues.

Good Faith Abatement

The parties stipulated that the conditions cited as a violation in this case were corrected in good faith by the respondent within the time fixed by the inspector. I agree and conclude that the respondent exercised good faith in abating the violation.

Negligence

I conclude and find that the respondent knew or should have known of the requirement for locating the sensor at the end of the belt flight in question and that its failure to advance the sensor line before the inspector found the violative condition is the result of its failure to exercise reasonable care. Although I have taken into account the testimony of Chief Electrician Taylor that work had begun to advance the sensor line during the shift when the violation was issued, the fact is that the line was not extended to the end after the belt flight was installed. Considering Mr. Taylor's interpretation of the standard, there is a strong inference that had the shift ended, the respondent would have waited until subsequent shifts to advance the line to the end of the belt.

Gravity

I conclude and find that the violation was serious. Failure to extend the fire sensing device to the end of the belt flight after it was installed presented a hazard in that in the event of a fire at the end of the belt, there would be no warning device available to alert the miners of such a hazard. Although the respondent's representative asserted that a fire suppression device was installed at the end of the belt, there is no credible testimony to support his assertion.

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Even if the fire suppression device was present, the lack of a warning device still presented a hazardous condition.

Significant and Substantial Violation

There is no credible testimony to support a finding that the violation in this case was significant and substantial. The burden of proof in this regard is on the petitioner, and since the inspector who issued the citation did not testify as to any factors which could contribute to an accident, I have no factual basis, other than the fact that the sensor at the end of the belt was missing, to support an "S & S" finding. Inspector Siria did not view the cited conditions, and he was not with Inspector Gerovac when the citation was issued. Under the circumstances, the "S & S" finding in this case IS VACATED.

Civil Penalty Assessment

On the basis of the foregoing findings and conclusions, respondent is assessed a civil penalty in the amount of \$175 for section 104(a) Citation No. 2505477, issued on January 7, 1985, for a violation of 30 C.F.R. 75.1103Ä4(a)(1).

ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$175 within thirty (30) days of the date of this decision. Payment is to be made to MSHA, and upon receipt of same, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge