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SOL (MSHA) V. LITTLE SANDY COAL SALES
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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 85-106
A.C. No. 15-12133-03502

v.

No. 1 Tipple or Tipple Mine

LITTLE SANDY COAL SALES,
RESPONDENT

DECISION

Appearances: Charles F. Merz, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner; Edgar B. Everman, President,
Little Sandy Coal Sales, Grayson, Kentucky,
for Respondent.

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. 801, et seq. Having considered the hearing 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. At all times pertinent, Respondent operated, in Kentucky, a coal processing facility, consisting of a scale, scale house, parts and lubricant storage trailer and a portable coal-processing system including coal cleaning, screening, crushing and loading equipment with inner-connecting conveyor belts. The processing system was powered by a 400-volt power unit and diesel engine.

2. On May 18, 1982, Inspector R.C. Hatter inspected Respondent's facility and determined that Respondent was not conducting electrical tests and examinations of electrical equipment as required by 30 C.F.R. 77.502. He issued Citation 960642 (for not recording electrical inspections), allowing Respondent until May 21, 1982, to comply with the cited standard. Because of Respondent's failure to abate

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the cited condition, on November 8, 1982, Federal Inspector Barry Lawson issued a withdrawal order (No. 2053102) to shut down its operations until the outstanding citation was complied with. That order was terminated the next day because of prompt compliance with the electrical standard.

3. On February 15, 1983, Inspector Hatter inspected Respondent's facility and determined that Respondent had failed to conduct periodic noise surveys as required by 30 C.F.R. 71.803. He issued Citation 9976274 (for not recording noise inspections), which was terminated on March 15, 1983, after timely abatement of the cited condition.

DISCUSSION WITH FURTHER FINDINGS

Respondent's failure to record periodic noise and electrical tests was due to negligence. Respondent contends that the standards should not have applied to its operations because it was a small operation, not subject to significant changes in noise or electrical conditions. This argument is not sound on the facts or the law. Respondent's equipment and processes involved many variables that could change noise or electrical conditions, rendering the required inspections important for safety and health purposes. Also, the law does not permit an operator to reduce or omit the required inspections based on its opinion of the need for such inspections. If an operator believes that the particular facts of its business justify a modification of the application of self-inspection requirements, section 101(c) of the Act provides a procedure for petition to the Secretary to grant a modification in appropriate cases. Respondent did not attempt to use this procedure, but simply ignored the inspection requirements of the Federal Regulations.

Respondent is a small business. The violations are serious in that the required inspections are an important preventive safety protection of the miners. Considering all of the criteria of section 110(i) for assessing civil penalties, a penalty of \$50 is found appropriate for the violation of 30 C.F.R. 71.803. Considering all the factors of section 110(i), and the greater seriousness of the electrical reporting violation, and the bad faith delay of achieving compliance with that standard, a civil penalty of \$150 is found appropriate for the violation of 30 C.F.R. 77.502.

CONCLUSIONS OF LAW

1. At all relevant times, Respondent's facility was a mine within the meaning of the Act.

2. Respondent violated 30 C.F.R. 71.803 as alleged in Citation 9976274, and is ASSESSED a civil penalty of \$50 for such violation.

3. Respondent violated 30 C.F.R. 77.502 as alleged in Citation 960642, and is ASSESSED a civil penalty of \$150 for such violation.

ORDER

Respondent shall pay the above civil penalties in the total amount of \$200 within 30 days of this Decision.

William Fauver
Administrative Law Judge