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SOL (MSHA) V. J & C CORPORATION
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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 PROCEEDINGS

Docket No. SE 85-40
A.C. No. 40-02268-03527

v.

Docket No. SE 85-46
A.C. No. 40-02268-03528

J & C COAL CORPORATION, A/K/A
J C CORPORATION,
RESPONDENT

Pee Wee No. 1
Campbell County, TN

DECISION

Appearances: Charles F. Merz, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, TN, for
Petitioner;
Mr. Stuart P. Bradley, Treasurer, JC Corporation,
Jacksboro, TN, for Respondent

Before: Judge Fauver

The Secretary of Labor brought these actions 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 the time the citations and orders were issued, Respondent was known as JC Corporation. Effective January 31, 1985, the legal name was changed to J & C Coal Corporation, reflecting the corporate name as registered with the Tennessee Secretary of State. In accordance with the parties' stipulation, the Respondent's name in the caption of this case is AMENDED to be "J & C Coal Corporation, a/k/a JC Corporation."

2. At all pertinent times, Respondent has operated an underground coal mine in Campbell County, Tennessee, known as Pee Wee No. 1 Mine, producing coal for sale or use in or substantially affecting interstate commerce.

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3. During the 24 months preceeding November, 1984, 51 citations were issued at this mine on 68 inspection days for an average of .75 citations per inspection day.

4. On September 19, 1984, Federal Inspector James B. Payne conducted an inspection of the Pee Wee No. 1 Mine pursuant to 103(a) of the Act. In the course of his inspection he observed violations of the approved roof control plan and violations involving exposed high voltage components of the electrical system, for which he issued Citation No. 2470944 and Order No. 2470946. He accurately determined, under 104(d)(1) of the Act, that the violations could significantly and substantially contribute to the cause of an injury and that they were due to an unwarrantable failure of the operator to comply with mandatory health and safety standards.

5. On September 24, 1984, Inspector Payne again inspected the mine and observed that the power center supplying electrical power to the No. 3 belt drive had been located in a return air conduit and because of an S & S violation, he issued Order No. 2470951 under 104(d)(1) of the Act.

6. On November 14, 1984, Inspector Payne conducted another inspection of the mine pursuant to 103(a) of the Act and observed conditions constituting violations of mandatory safety standards for which he issued Citation Nos. 2472496, 2472497, 2472498, 2472499 and 2472500 under 104(d)(1) of the Act.

7. On November 18, 1984, Inspector Payne again inspected the mine in accordance with 103(a) of the Act and observed that the ventilation control plan was not being followed and issued Citation No. 2475981 under 104(d)(1) of the Act.

8. On November 19, 1984, Inspector Payne inspected the mine pursuant to 103(a) of the Act and observed that fire sensors were not located close enough to the No. 3 belt conveyor to be effective. Citation Nos. 2475962 and 2475963 were issued in accordance with the provisions of 104(d)(1) of the Act.

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9. Respondent does not dispute the observations of the inspector as reflected in the above citations and orders nor does it contest the inspector's findings as to the gravity of the respective conditions. The factual allegations of such citations and orders are incorporated herein as findings of fact.

10. The Secretary stipulates that the conditions giving rise to the citations and orders were promptly and in good faith abated.

11. At the time the citations and orders were issued, Respondent was controlled exclusively by Charles Bowlin, President of the Corporation. On February 1, 1985, all stock in the Respondent corporation was purchased from Mr. Bowlin by D.M.C. Energy, Inc., wholly terminating all interests of Mr. Bowlin in the Respondent corporation. Thereafter, management and direction of mining operations were performed by Charles M. Asbury and Stuart Bradley. By the terms of the purchase agreement D.M.C. Energy, Inc., assumed all financial liabilities of the corporation.

12. At the time D.M.C. Energy, Inc., obtained the stock of J & C Coal Corporation, it was then operating an underground mine at Lickfork, Tennessee, which mine is currently registered with MSHA reflecting D.M.C. Energy, Inc., as the operator, mine identification No. 40A01799.

13. Upon obtaining control of the J & C Coal Corporation, D.M.C. Energy, Inc., ordered the subject mine temporarily closed and requested MSHA to conduct a complete inspection of the mine for the purpose of identifying all conditions which would give rise to a citation if observed in the normal course of a mine inspection. Such an inspection was conducted and D.M.C. Energy, Inc., expended substantial funds to correct all potentially violative conditions and to replace existing mining equipment.

14. The mine reopened about March 1, 1985. In the 12 months following reopening of the mine MSHA inspectors issued 23 citations to the operator on 16 inspection days.

DISCUSSION WITH FURTHER FINDINGS

Respondent concedes all of the violations charged herein, the inspector's allegations as to negligence and gravity, and the reasonableness of the amounts of civil penalties originally proposed by the Secretary. Its defense is a request or claim for elimination or mitigation of the civil penalties on the grounds of new management, new stock ownership, large expenditures of the new owner to bring the mine into compliance with the Act, and non-involvement by the new owner and management with the violations found in 1984.

I find that the safety expenditures and changes by the new management are commendable, especially when compared to the safety record of Respondent under the prior management in 1984. However, the new measures were needed because Respondent under the prior management had failed to comply with numerous mandatory safety standards of the Act and regulations promulgated under the Act. The safety record after the 1984 violations is not a basis for eliminating or reducing civil penalties for such violations. However, considering the financial needs of Respondent, six months will be allowed to pay the civil penalties assessed herein.

In permitting this schedule for payment, I note that Respondent acknowledges its financial ability to pay Mrs. Bowlin under the stock-sale agreement, and that civil penalties due MSHA for the 1984 violations are a pro rata offset of Respondent's indebtedness under such sale agreement.

Respondent is a medium-sized coal business. At the time of the violation it was a small operator. Its number of miners and coal production have substantially increased since the present management took over operations.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.
2. Respondent violated the sections of the Act or 30 C.F.R. as charged in the following citations and orders, for which Respondent is ASSESSED the civil penalties shown:

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Citation or Order	Civil Penalty
2470944	\$1,000
2470946	850
2470951	850
2472496	20
2472497	20
2472498	20
2472499	74
2472500	20
2475961	168
2475962	20
	Total \$3,042

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay the above civil penalties in the total amount of \$3,042 in six equal monthly payments of \$507, beginning on June 1, 1986, and becoming due on the first day of each successive month thereafter until the total of \$3,042 is paid.

William Fauver
Administrative Law Judge