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SOL (MSHA) V. SOLAR FUEL COMPANY
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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. PENN 86-288
A.C. No. 36-06289-03513

v.

Solar No. 10 Mine

SOLAR FUEL COMPANY, INC.,
RESPONDENT

DECISION

Appearances: Susan M. Jordan, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for Petitioner; David C. Klementik, Esq., President,
Solar Fuel Company, Inc., Friedens, Pennsylvania,
for Respondent.

Before: Judge Maurer

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," for alleged violations of regulatory standards. The general issues before me are whether the Solar Fuel Company (Solar) has violated the cited regulatory standards and, if so, what is the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act. Additional issues are also addressed in this decision as they relate to specific citations.

The case was heard in Pittsburgh, Pennsylvania, on January 8, 1987. Both parties waived the filing of post-hearing briefs.

STIPULATIONS

The parties stipulated to the following (Tr. 708):

1. The Solar No. 10 Mine is owned and operated by the respondent, Solar Fuel Company, Inc.
2. The Solar No. 10 Mine is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.
3. The presiding Administrative Law Judge has jurisdiction pursuant to section 105 of the Act.

~300

4. The citations and their terminations involved herein were properly served by a duly authorized representative of the Secretary of Labor upon an agent of the respondent at the dates, times, and places stated therein and may be admitted into evidence for the purpose of establishing their issuance.

5. The parties stipulate to the authenticity of their exhibits but not to the relevancy of the truth asserted therein.

6. All of the alleged violations have been abated within a timely fashion.

7. The total production of Solar No. 10 Mine is between 50,000 and 100,000 tons of coal per year.

8. The Solar No. 10 Mine began operations in March of 1986. The three violations at issue were the first violations cited at the mine. There are no previous violations.

Citation No. 2694689

The Secretary, by counsel, has moved to vacate this citation and withdraw the civil penalty assessed thereon. I granted this motion on the record at the hearing of this case (Tr. 5).

Citation No. 2694571

At the hearing and on the record, the Secretary moved to modify this citation to remove the "significant and substantial" allegation and the respondent, of course, did not object. I granted the motion (Tr. 9). This section 104(a) citation alleged a violation of 30 C.F.R. 77.0516 and the respondent later admitted the violation (Tr. 60). Under the circumstances, I conclude that a civil penalty in the amount of \$25 is appropriate under the criteria set forth in section 110(i) of the Act.

Citation No. 2694572

This citation alleges a "significant and substantial" violation of the regulatory standard at 30 C.F.R. 75.100201(a) and alleges as follows:

Two pieces of non-permissible electric equipment were found to be located within 150 feet from pillar workings (cave). A G.E. safety switch manual control on/off breaker box used to supply power to the conveyer head and an Allen Bradley metal control box used to supply power to the JABCO box which is used to start and stop the pan

~301

line and conveyor head automatically were found to be in a non-permissible condition in that openings in excess of .009 of an inch were found in both boxes. Both of these non-permissible boxes were located in the No. 14 room of the 2 right section off of the 1st South mains (003) section. These boxes were found to be located approximately 82 feet from pillar workings. The pillared area was located in the No. 2 room and such measurements were taken from the toe of the fall to the non-permissible boxes. Line brattice was being used to separate the No. 13 room from the No. 14 room.

The cited standard requires as relevant hereto that electrical equipment must be permissible and maintained in a permissible condition when located within 150 feet of pillar workings. The factual testimony of MSHA Inspector Joseph Trybus to the effect that two pieces of nonpermissible electrical equipment were located approximately 82 feet from such pillared workings is not disputed.

The two pieces of equipment cited by the inspector were safety switch control boxes and he testified that the hazard he was concerned with would be methane entering these nonpermissible boxes and a random spark causing an explosion. He further testified that although he detected no methane at the time of his inspection, there is always the possibility of the air reversing itself in the mine or the possibility of the air not getting to a certain area which could cause a methane build-up and which could in turn enter the nonpermissible equipment.

In the event of a methane explosion, he would expect it to be reasonably likely that serious to fatal injuries would occur to persons working in that area. There were approximately seven men working on this section at the time.

I find that the facts of this violation are not seriously in dispute and the violation is accordingly proven as charged. Within this framework of unrebutted evidence it may also reasonably be inferred that this condition constituted a "significant and substantial" violation of the cited standard. See Secretary v. Mathies Coal Company, 6 FMSHRC 1 (1984). The violation was accordingly also of a serious nature. Moderate negligence may also reasonably be inferred from the circumstances. The area of the mine is frequently examined and management knew or at least should have known of the non-permissible condition of these boxes and their distance from the pillar workings.

~302

Considering the statutory criteria contained in section 110(i) of the Act, I find that a civil penalty of \$126, as proposed, is warranted.

Citation No. 2694573

This citation alleges a "significant and substantial" violation of the regulatory standard at 30 C.F.R. 75.301 and alleges as follows:

The quantity of air reaching the last open crosscut between the Nos. 2 and 1 rooms of the 3 right butt off of 1st South (005) section as measured with a Taylor anemometer and watch was found to be only 7,200 cubic feet a minute. The law requires that the minimum quantity of air reaching the last open crosscut in any pair or set of developing rooms shall be 9,000 cubic feet a minute.

Once again, the respondent does not dispute the facts alleged in the citation (Tr. 44) and since those facts, if true, amount to a violation of the cited standard, I find that the violation, as charged, is proven.

The inspector marked this as a "significant and substantial" violation because of the possibility of fumes, gases, respirable dust, methane and smoke entering the intake air and the further possibility of an ignition source from non-permissible equipment operating on the section. The result, he testified, could be an explosion. There were three men working on the section at that time.

The respondent doesn't believe that the violation should be classified "S & S" because their position is that the drop in airflow was of a temporary nature, caused by a displaced line brattice. However, I note Mr. Klementik had no knowledge of when it was dislodged or how long it had been out of place prior to the inspector's writing the citation.

I fully credit the factual and opinion testimony of Inspector Trybus on the significance of this violation and in light of the seriousness of the injuries that could reasonably have been caused by the lack of air reaching the last open crosscut between the rooms cited, I find the violation was "significant and substantial." Mathies, supra.

I have considered the criteria in section 110(i) of the Act and I conclude that the proposed civil penalty of \$54 is appropriate.

ORDER

Solar Fuel Company, Inc., is hereby ordered to pay the following civil penalties within 30 days of the date of this decision:

Citation No.	Amount
2694571	\$ 25
2694572	\$126
2694573	\$ 54
2694689	Vacated

Total: \$205

Roy J. Maurer
Administrative Law Judge