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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDINGS

Docket No. KENT 88-36
A.C. No. 15-16037-03501

v.

Docket No. KENT 88-79
A.C. No. 15-16037-03502

BLACK BEAUTY COAL COMPANY,
RESPONDENT

No. 1 Mine

DECISION

Appearances: Joseph B. Luckett, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, TN, for the
Petitioner;
Ms. Maxine Patterson, and Mr. Owen Grubb, Black
Beauty, Middlesboro, KY, for the Respondent.

Before: Judge Fauver

These consolidated proceedings were brought by the Secretary
of Labor under the Federal Mine Safety and Health Act of 1977, 30
U.S.C. 801 et seq. The Secretary seeks civil penalties for
alleged violations of safety standards.

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 relevant, Respondent, a small operator,
operated a surface coal mine, known as Mine No. 1, in Knox
County, Kentucky. The mine produced coal for regular sales or use
in or substantially affecting interstate commerce.

2. Citation 2794718 was issued on May 20, 1987, by Inspector
Alex Sorke for a violation of 30 C.F.R. 77.1001. Loose,
hazardous material had not been stripped from the top of the mine
pit and the mine highwall. The mine highwall at the site was 40
to 50 feet high and 50 to 60 feet long. There were overhanging
trees, as well as loose dirt and rocks throughout the length of
the wall.

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3. Citation 2794719 was issued on May 20, 1987, by Inspector Sorke for a violation of 30 C.F.R. 77.403. A front-end loader was in operation beneath the highwall. The cab on the front-end loader had been removed, and therefore the equipment had no falling object protection.

4. Citation 2794721 was issued on May 20, 1987, by Inspector Sorke for a violation of 30 C.F.R. 48.25. Miners were employed on the mine site without having had the training required for new miners.

5. Order 2794722 was issued on May 20, 1987, by Inspector Sorke for a violation of 30 C.F.R. 77.410. A Caterpillar bulldozer was not equipped with a backup alarm.

6. Order 2794717 was issued by Inspector Sorke on May 20, 1987, under 107(a) of the Act, closing the entire pit because of an imminent danger. The imminent danger resulted from the dangerous highwall in conjunction with the operation of mobile equipment near the highwall without falling object protection. This order was not terminated until May 29, 1987.

7. Citation 2794724 was issued on May 27, 1987, by Inspector Sorke for operating the mine contrary to the above closure order (No. 2794717). The mine site was in operation May 27, 1987, while the order was in force. The front-end loader, which lacked falling objection protection, had previously been removed from the pit on May 20, 1987, pursuant to a 107(a) order, but had been returned to the pit. Piles of coal were present and ready for loading. Coal trucks were lined up to be loaded.

8. Citation 2794725 was issued on May 27, 1987, by Inspector Sorke for operating a Caterpillar bulldozer in violation of a closure order (No. 2794722). The order, written under 104(d)(1) of the Act on May 20, 1987, had removed the bulldozer from service for failure to have a backup alarm.

DISCUSSION WITH
FURTHER FINDINGS

With the exception of Citation 2794725, discussed below, I credit the inspector's testimony and notes as to the conditions he observed when the above citations and order were issued. The credible evidence also warrants the conclusions reached by the inspector as to gravity, negligence, and violations and his allegations as to such matters in the citations and order (except Citation 2794725) are incorporated in this Decision as conclusions.

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Regarding Citation 2794725, the inspector testified that he heard an engine which he assumed to be the bulldozer that was the subject of the backup alarm order and listened for a backup alarm but heard none. However, he could not see the vehicle at that time. Later he saw the bulldozer standing still, and walked past the bulldozer, but did not inspect it to see whether it had a backup alarm. I find that the evidence does not meet the Secretary's burden of proving the violation as charged.

Considering the criteria for civil penalties in 110(i) of the Act, I find that the following civil penalties are appropriate for the violations found herein:

Citation or Order	Civil Penalty
Citation 2794718	\$700
Citation 2794719	700
Citation 2794721	800
Order 2794722	500
Citation 2794724	950
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	\$3,650

CONCLUSIONS OF LAW

1. The undersigned judge has jurisdiction over these proceedings.

2. Respondent violated the safety standards as alleged in the above citations and order, except Citation 2794725.

ORDER

WHEREFORE IT IS ORDERED that:

1. Respondent shall pay the above civil penalties of \$3,650 within 30 days of this Decision.

2. The charge alleged in Citation 2794725 is DISMISSED.

William Fauver
Administrative Law Judge