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SOL (MSHA) v. TOLER CREEK ENERGY
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

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

v.

TOLER CREEK ENERGY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. KENT 90-348
A. C. No. 15-15509-03527

No. 1 Mine

Docket No. KENT 91-30
A. C. No. 15-15509-03532

No. 2 Mine

DECISION APPROVING IN PART AND
DISAPPROVING IN PART A PROPOSED
SETTLEMENT

Before: Judge Fauver

These consolidated proceedings are petitions for civil penalties under 105(d) of the Federal Mine Safety and Health Act of 1977. 30 U.S.C. 801 et seq.

The parties have filed a motion to approve settlement.

I

In Docket No. KENT 90-348, the settlement would reduce the penalty from \$1,300 to \$700 for Citation 3368969 and have no change in the penalties for Order 3368970 (\$1,300) and Order 3368971 (\$1,000). In Docket No. KENT 90-30 the settlement would reduce the penalty from \$850 to \$500 for Order 3361356, from \$850 to \$500 for Order 3369132, and have no change for Order 3361357 (\$850). I find these proposals consistent with 110(i) of the Act.

II

In Docket No. KENT 91-30, the settlement would merge the charges in Order 3369721 and Order 3369722 into Order 3369722, charging a single violation of 30 C.F.R. 75.300 for failure to maintain the mine fan in its original condition.

Order 3369721 charges a violation of 75.300 because the main mine fan was not maintained as originally approved. The fan's circuit had been rewired so that the fan shared a power circuit with No. 1 belt drive. It alleges that the rewiring was done in

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an unworkmanlike manner and required the stoppage of the main fan at any time No. 1 belt was stopped, and that this violated the approved mine fan plan. The plan required that the fan circuit be separate from any other mine circuit.

The motion states that Order 3369722 was issued the same date "for problems with the mine fan's electrical system under 77.900 of the regulations."

The parties have not attached a copy of Order 3369722 and have not shown that the charge in such order is so closely related to the charge in Order 3369721 as to warrant merger of the charges. Therefore, unless the missing order is presented with a showing that merger is justified, that part of the motion will be denied.

III

The motion seeks to merge the charges in Order 3361358 and Order 3361359 into Order 3361359.

Order 3361358 charges a violation of 75.303 for failure to make adequate preshift examinations along Nos. 1, 2, 3, 4, 5 and 6 belt conveyors in 001-0 working section.

Order 3361359, issued the same date, charges a violation of 75.305 for failure to conduct adequate weekly examinations in the return air course.

The motion seeks a merger of the charges on the ground that "the two violations were the result of a single action by the operator" However, the orders allege separate violations based on the failure to report and correct separate hazards in separate locations. Order 3361358 alleges inadequate preshift examinations as reflected by the failure to report and correct "numerous violations of mandatory safety standards issued along the six belt conveyors" referencing citations and orders that charge violations for float coal dust and loose coal accumulations along the belt conveyors.

In contrast, Order 3361359 alleges that inadequate examinations of the return air course were evident from the failure to report and correct violations of safety standards in that "there were at least 25 permanent stoppings that were not plastered. Stoppings were missing from cross-cuts in two different locations."

I find that these separate orders charge discrete violations and the motion does not show sufficient cause for a merger of charges.

IV

The motion seeks to merge the charges in Orders Nos. 3362168, 3362169, and 3362176 into Order 3362169 charging a single violation of 75.400 for accumulations of loose coal and float coal dust on Nos. 5 and 6 belt drives.

Order 3362168 alleges a violation of 75.400 because loose coal and float coal dust accumulations 2 to 4 inches deep were present the entire length of No. 6 belt entry, for approximately 700 feet.

Order 3362169 alleges a violation of 75.1100-2(b) because fire hose outlets were not installed at 300 feet intervals for the entire waterline in Nos. 5 and 6 belt conveyors, a distance of about 2,200 feet.

Order 3362176 charges a violation of 75.400 because float coal dust ranging from 1/4 to 2 inches deep was present at numerous locations in an area from No. 5 belt drive to an outby distance of approximately 1,500 feet.

The motion states that "the presence of coal, loose coal and float coal dust along the two belts is the same violation of the Act and that the lack of sufficient waterhose outlets on beltline was a condition contributing to the fire hazard due to dust buildups on those belts."

I find that these orders charge discrete violations and the motion does not show sufficient cause for a merger of charges.

V

The motion seeks to merge the charges in Orders Nos. 3369123, 3369125, 3369126, and 3369127 into Order 3369123 charging a single violation of 75.400 for float coal dust accumulations in Nos. 1, 2, and 3 beltlines and No. 2 entry.

Order 3369123 charges a violation of 75.400 because float coal dust ranging from 1 to 4 inches deep was allowed to accumulate along the ribs, mine floor and under the belt roller on No. 1 belt conveyor in No. 2 entry and extended the length of the No. 1 belt conveyor, a distance of approximately 1,500 feet.

Order 3369125 charges a violation of 75.400 because float coal dust ranging from 1 to 10 inches deep was allowed to accumulate along the ribs, mine floor and under the belt roller on No. 2 belt conveyor in No. 2 entry for a distance of approximately 1,200 feet. The first 10 bottom belt rollers inby this drive were turning in float coal dust.

Order 3369126 charges a violation of 75.400 because float

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coal dust one inch deep was allowed to accumulate in the bottom of the 480 volt energized starter box used to control power to No. 2 belt drive.

Order 3369127 charges a violation of 75.400 because float coal dust ranging from 1 to 12 inches deep was allowed to accumulate along the ribs, mine floor and under the belt rollers on No. 3 belt in No. 2 entry, a distance of approximately 800 feet.

I find that these orders charge discrete violations and that the motion does not show sufficient cause for a merger of charges.

ORDER

WHEREFORE IT IS ORDERED that:

1. The motion to approve settlement is GRANTED as to the following citations and orders:

Citation or Order	Approved Civil Penalty
3368969	\$ 700
3368970	\$1,300
3368971	\$1,000
3361356	\$ 500
3361357	\$ 850
3369132	\$ 500
	\$4,850

2. Respondent shall pay the above penalties within 30 days of the date of this decision.

3. The motion to approve settlement by merger of charges, as discussed above, is DENIED. Those charges will proceed to hearing unless a new settlement motion is submitted and approved.

William Fauver
Administrative Law Judge