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SOL (MSHA) V. LION MINING
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 93-490
Petitioner : A.C. No. 36-02398-03693
v. :
 : Grove No. 1 Mine
LION MINING COMPANY, :
Respondent :

DECISION

Appearances: Theresa C. Timlin, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for the Secretary of Labor;
Joseph Yuhas, Esq., Barnesboro, Pennsylvania,
for Respondent.

Before: Judge Melick

This case is before me upon a petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). Following an evidentiary hearing, Petitioner filed a motion to approve a settlement agreement proposing to delete the "significant and substantial" findings from Citation Nos. 3706632 and 3706891 and reducing the total penalties for all citations from \$854 to \$475. I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is acceptable under the criteria set forth in Section 110(i) of the Act.(Footnote 1)

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that Respondent pay a penalty of \$475 within 30 days of this order.

Gary Melick
Administrative Law Judge

1 As requested by the Secretary, the basis for settlement of Citation No. 3706569 is set forth in full as an Appendix hereto.

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Distribution:

Theresa C. Timlin, Esq., Office of the Solicitor,
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Joseph Yuhas, Attorney for Lion Mining Company,
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APPENDIX

Citation No. 3706569 was issued on May 17, 1993, by an authorized representative of the Secretary (MSHA inspector) pursuant to 104(a) of the Act for a violation of 30 C.F.R. 75.340(a)(1). The citation states

The air current used to ventilate the No. 2 Ram-Car Charging Station in No. 5 Entry of 10 left Section was not being coursed to the return air course adequately in that a chemical smoke tube test taken above two Ram-Car batteries that the smoke traveled out through crosscut 5 to 4 entries which is the primary intake air escapeway for this station.

The inspector assessed the violation to be significant and substantial, with it being reasonably likely for an injury or illness resulting in lost work days to occur. The inspector believed four persons would be affected by the hazard and assessed the operator's negligence as low.

A hearing was held before the Honorable Gary Melick on March 24, 1994, in Somerset, Pennsylvania, at which MSHA Inspector Kenneth Fetsko testified that while inspecting Grove No. 1 Mine on May 17, 1993, he traveled to the 10 Left Section and inspected the Ram-Car battery charging station. One Ram-Car was being charged at the time. A second Ram-Car battery, which was not on charge, was adjacent to the first battery. At the other end of the crosscut, a golf cart battery was also being charged. Inspector Fetsko released several smoke tubes to check the direction of the air flow in the cross cut. He observed the smoke travel slowly over the battery which was not being charged, and out of the crosscut into the intake escapeway. He did not observe any air travel into the return. A mine map introduced into evidence as Joint Exhibit No. 2, showed that the air from the intake escapeway traveled to the working face. Inspector Fetsko further testified that in the course of abating the citation, he learned that a door in the return had been closed, blocking the normal flow of air from the crosscut into the return.

Ronald Gossard, an electrical engineer, testified as an expert for MSHA regarding the reasonable likelihood of an injury occurring as a result of the improper ventilation at the crosscut. Mr. Gossard explained that batteries liberate hydrogen during the charging process. Hydrogen is an extremely explosive gas, with an explosive range that is lower than methane. He further testified that the batteries themselves serve as ignition sources. As the hydrogen was observed traveling over the batteries, Mr. Gossard opined that it was reasonably likely that the hydrogen gas could ignite, causing an explosion in the area of the charging station.

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Hiram Riblett, Manager of Engineering for Lion Mining Company, also testified. He essentially concurred with Mr. Gossard about the explosive risk of hydrogen being liberated from batteries.

In light of the testimony presented at hearing, the parties agree that it was reasonably likely, if normal mining operations had continued, that an explosion would occur, resulting in a serious injury to workers in the area of the charging station. The parties agree that the operator's negligence was correctly assessed as low.