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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OR LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. LAKE 94-74
Petitioner : A.C. No. 11-00877-04033
v. :
 : Wabash Mine
AMAX COAL COMPANY, :
Respondent :

DECISION DENYING MOTION FOR SUMMARY DECISION

This is a civil penalty case under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. It involves three 104(d)(2) orders for alleged violations of 30 C.F.R. 75.400

Respondent has moved for summary decision as to one of the orders (No. 405043), which alleges an accumulation of combustible materials in active workings of the Wabash Mine, specifically on a diesel ram car.

The cited regulation is a statutory mandatory safety standard, which is provided in 304(a) of the Federal Mine Safety and Health Act of 1969. The statutory standard was designated in the Secretary's regulations of 1970 as 30 C.F.R. 75.400. The standard provides

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

Respondent contends that the standard does not apply to non-electrical equipment in active workings. It points to the definition of "active workings," which is "any place in a coal mine where miners are normally required to work or travel" (30 C.F.R. 75.2) and to the Commission's statement that "active workings generally are areas or places in a mine, not equipment" (in holding that coal conveyor belts are not in and of themselves "active workings" and thus subject to preshift examinations). Jones & Laughlin Steel Corp., 5 FMSHRC 1209, 1212 (1983), rev'd on other grounds sub nom. UMWA v FMSHRC and Vesta Mining Co., 731 F.2d 995 (DC. Cir. 1984), aff'd on remand, 8 FMSHRC 1058 (1986).

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The Secretary contends that, while stressing the prohibition of accumulations on electrical equipment, the standard does not restrict the phrase "active workings" to exclude accumulations on non-electrical equipment.

In Black Diamond Coal Mining Company, Volume No. 2, FMSHRC 1117, 1120 (1985), the Commission discussed the clear Congressional intent to eliminate fuel sources of explosions and fires in active workings of underground coal mines:

* * * We have previously noted Congress' recognition that ignitions and explosions are major causes of death and injury to miners: "Congress included in the Act mandatory standards aimed at eliminating ignition and fuel sources for explosions and fires. [Section 75.400] is one of those standards." Old Ben Coal Co., 1 FMSHRC 1954, 1957 (December 1979). We have further stated "(i)t is clear that those masses of combustible materials which could cause or propagate a fire or explosion are what Congress intended to proscribe." Old Ben Coal Co., 2 FMSHRC 2806, 2808 (October 1980). The goal of reducing the hazard of fire or explosions in a mine by eliminating fuel sources is effected by prohibiting the accumulation of materials that could be the originating sources of explosions or fires and by also prohibiting the accumulation of those materials that could feed explosions or fires originating elsewhere in a mine.

The standard reflects a strong Congressional intention to prohibit combustible accumulations anywhere in active workings, while stressing the prohibition of accumulations on electrical equipment. Similarly, the standard prohibits the accumulation of float coal dust anywhere in active workings, while stressing that the prohibition includes "float coal dust deposited on rock-dusted surfaces." Given the crucial purpose of removing fuel sources of fires and explosions, the standard would be self-defeating if it permitted combustible accumulations on non-electrical equipment. The emphasis on accumulations on "electrical equipment" and "float coal dust deposited on rock-dusted surfaces" should be read as particulars without restricting the broader term "active workings."

Accordingly, I find that 30 C.F.R. 75.400 applies to the diesel equipment cited in Order No. 405043. The motion for summary decision is therefore DENIED.

William Fauver
Administrative Law Judge

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