CCASE:
SOL (MSHA) V. ABM COAL CO
DDATE:
19941129
TTEXT:

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	:	CIVIL PENALTY PROCEEDINGS
	:	Docket No. KENT 94-320
	:	A. C. No. 15-16973-03538
v.	:	
	:	Docket No. KENT 94-329
ABM COAL COMPANY, INC., Respondent	:	A. C. No. 15-16208-03576
	:	Docket No. KENT 94-330
	:	A. C. No. 15-16208-03577
	:	
	:	Docket No. KENT 94-533
	:	A. C. No. 15-16208-03
	:	
	:	No. 1 Mine

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee for Petitioner;
Roger Blair, Office Manager, ABM Coal Company, Inc., Pro Se, Mary Alice, Kentucky for Respondent.

Before: Judge Hodgdon

These cases are before me on petitions for assessment of civil penalties filed by the Secretary of Labor, acting through his Mine Safety and Health Administration (MSHA), against ABM Coal Company, Inc., pursuant to Sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815 and 820. The petitions allege 32 violations of the Secretary's mandatory health and safety standards. For the reasons set forth below, I vacate one citation, affirm the rest, while modifying three of them, and assess penalties in the amount of $5,743.00.

A hearing was held in these cases on August 17, 1994, in Pineville, Kentucky. MSHA Inspector Robert D. Clay, testifying for the Secretary, was the only witness at the hearing. In addition to the evidence presented at the hearing, I have also considered the parties post-hearing briefs in my disposition of these cases.

SETTLED VIOLATIONS

At the beginning of the hearing, the parties advised that they had reached a settlement agreement in Docket Nos. KENT 94-320 and KENT 94-533. In addition, ABM's representative stated that there were several citations in the two remaining dockets that ABM did not wish to contest.

With regard to Docket No. KENT 94-320 the parties agreed to reduce the total amount of proposed penalties from $1,664.00 to $1,152.00. This was accomplished by reducing the proposed penalty for Citation No. 4039883 from $431.00 to $50.00 and the penalty for Citation No. 4039880 from $431.00 to $300.00. All of the other proposed penalties would remain as assessed.

The reduction in the first citation occurred because the citation had been subsequently modified by the inspector from "significant and substantial" to "non-significant and substantial" but the modification had not caught up with the file. (Tr. 9.) The other penalty was reduced because of a reduction in the number of miners affected by the violation. (Tr. 9-10.)

The parties agreed to reduce the proposed penalty in Docket No. KENT 94-533 from $1,008.00 to $800.00 by modifying Citation No. 4241932 to delete the "significant and substantial" designation and reducing the penalty from $168.00 to $50.00 and by modifying the level of negligence for Citation Nos. 3164811 and 3164812 from "moderate" to "low" and reducing the penalties for $168.00, each, to $123.00, each. (Tr. 11-12.) The penalties for the remaining three citations would be as originally assessed.

The Respondent did not contest Citation Nos. 3164862, 3164863, 3164864, 4258059, 4241744 and 4241745 in Docket No. KENT 94-329 and Citation Nos. 4241750, 4241755, and 4258021 in Docket No. KENT 94-330. Mr. Blair stated that he understood that the proposed penalty would be assessed for these citations. (Tr. 20.)

Having considered the representations and documentation presented, I conclude that the proffered settlements are appropriate under the criteria set forth in Section 110(i) of the Act, 30 U.S.C. 820(i). Accordingly, approval of the settlement agreements is granted and their provisions will be carried out in the order at the end of this decision.

CONTESTED VIOLATIONS

Docket No. KENT 94-329

Citation No. 3164865 was issued by Inspector Clay on October 26, 1993. It alleged a violation of Section 75.400 of the Regulations, 30 C.F.R. 75.400, and stated that "[c]ombustible material in the form of float coal dust has accumulated in the 004 face belt starting box and its energized electrical components." (Gov. Ex. 8.) Citation No. 3164868 sets out the same violation, on the same date, for "the energized belt starting box at the No. 4 belt drive." (Gov. Ex. 9.)

The inspector testified that float coal dust had accumulated on the electrical components and the floor of both starting boxes. He stated that it was black in color, appeared to be "an eighth of an inch, or so, deep," was "extremely flammable" and "extremely explosive when suspended . . . within any type of enclosed area." (Tr. 26, 47.)

Section 75.400 requires that "[c]oal dust, including float coal dust deposited on rock-dusted services, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein." In its brief, ABM implicitly admits that the violations occurred by arguing only that the violations were not "significant and substantial." (Resp. Br. at 1.) Consequently, I conclude that ABM violated Section 75.400 in both of these instances. Old Ben Coal Co., 2 FMSHRC 2806, 2808 (October 1980).

Turning next to the question of whether the violations were "significant and substantial," a "significant and substantial" (S&S) violation is described in Section 104(d)(1) of the Act, 30 U.S.C. 814(d)(1), as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." A violation is properly designated S&S "if, based upon the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (April 1981).

In Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984), the Commission explained:

> In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum, the Secretary of Labor must prove: (1) the underlying violation of mandatory safety standard; . . . (2) a discrete safety hazard--that is, a measure of danger to safety--contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

See also Austin Power, Inc. v. Secretary, 861 F.2d 99, 103-04 (5th Cir. 1988), aff'g Austin Power, Inc., 9 FMSHRC 2015, 2021 (December 1987)(approving Mathies criteria).

In United States Steel Mining Co., Inc., 7 FMSHRC 1125, 1129 (August 1985), the Commission stated further as follows:

> We have explained further that the third element of the Mathies formula 'requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury.' U.S. Steel Mining Co., 6 FMSHRC 1834, 1836 (August 1984). We have emphasized that, in accordance with the language of section 104(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. U.S. Steel Mining Company, Inc., 6 FMSHRC 1866, 1868 (August 1984); U.S. Steel Mining Company, Inc., 6 FMSHRC 1573, 1574-75 (July 1984).

This evaluation is made in terms of "continued normal mining operations." U.S. Steel Mining Co., Inc., 6 FMSHRC 1573, 1574 (July 1984). The question of whether a particular violation is significant and substantial must be based on the particular facts surrounding the violation. Texasgulf, Inc., 10 FMSHRC 498 (April 1988); Youghiogheny & Ohio Coal Co., 9 FMSHRC 1007 (December 1987).

As is usually the case, whether these violations were S&S turns on the third element of the Mathies criteria. In connection with this element, Inspector Clay testified that:

> Inside [these] starting box[es] there are exposed conductors, there are electrical components; there is constant arcing. Every time the conveyor belt is

> stopped or started there's a line starter contained herein; there's other electrical components, circuit breakers that have a tendency to arc anytime the power was removed from the conveyor belt due to any type of malfunction or any type of repair work.

(Tr. 26-7, 47.)

The inspector stated that if arcing occurred with an accumulation of fine coal dust a "fire" and "an explosion which would initially blow the lids off of the box or blow doors open and spread it to the mine outby area" would result. (Tr. 27, 47.) He further testified that if the fire spread out to the mine, the ribs could catch fire, miners could be overcome by the smoke and that float coal dust in the mine air, which was present around the conveyor belts, "would intensify the explosion of the fire." (Tr. 27-8, 47-8.)

ABM argues that the violations were not S&S because as part of its weekly cleanup program the starting boxes are routinely vacuumed by the company's electrician and, therefore, only a minute amount of coal dust could accumulate between cleaning periods. It states that "[o]ur cleanup program was approved by MSHA and there has never been an incident caused by dust in these starting boxes." (Resp. Br. at 1.)

The Commission has held that "[a] cleanup plan cannot establish procedures that allow coal and other combustible materials to accumulate in violation of section 75.400," nor preclude the violation from being S&S. Utah Power & Light Co., 12 FMSHRC 965, 969-71 (May 1990). I conclude that the uncontroverted testimony of Inspector Clay establishes "that the hazard contributed to by the violation, an ignition or explosion in the active workings in question, posed a reasonable likelihood of injury to any miners working there." Id. at 971. See also Mid-Continent Resources, Inc., 16 FMSHRC 1226, 1231-32 (June 1994). Accordingly, the violations were "significant and substantial."

The next contested citation was issued on November 28, 1993. Citation No. 3164879 is for a violation of Section 75.512, 30 C.F.R. 75.512, and states that "[t]he energized 4,160 volt silpak power center, serial No. B-799-578[,] located 1 cross cut from the No. 6 belt head was not maintained in a safe operating condition. The lid over the energized 4,160 volt power wires was not secured." (Gov. Ex. 11.)

Section 75.512 requires that "[a]ll electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions." In connection with this violation, Inspector Clay testified that there are three lids on the power center, secured by eight bolts, and that three bolts were missing from one of the lids. He estimated that in this unsecured condition the lid could be raised five or six inches and access gained to the inside by an unqualified person, i.e. someone other than a certified electrician. Based on this evidence, I conclude that the regulation was violated.

The inspector believed that this violation was "significant and substantial" because "there were energized power conductors there. There was nothing to hinder anyone from coming over there had there been a malfunction." (Tr. 62.) On the other hand, he also testified that even if the power center had all its bolts in place, anyone with "[e]ither a half-inch socket and a ratchet or a pair of adjustable pliers or possibly a crescent wrench" could get into it. (Tr. 62-3.)

In view of the fact that such tools would not appear to be that hard for an unauthorized person to acquire in a mine, and the fact that the lid could only be raised five or six inches, I do not believe that three missing bolts raises the likelihood of a serious injury in this instance from possible, which would exist even if the bolts were present, to reasonably likely. Accordingly, I conclude that the third element of the Mathies criteria has not been met, and that the violation was not "significant and substantial." I will adjust the penalty appropriately.

Citation No. 3164880 was also issued on November 28. It sets out a violation of Section 75.202(a), 30 C.F.R. 75.202(a), and relates that "[l]oose inadequately supported draw rock was observed at various locations along the No. 5 belt line. This draw rock ranged in thickness of 2 to 5 inches." (Gov. Ex. 13.) Inspector Clay testified that this was in the No. 3 entry and that the belt line also served as a secondary escapeway. He opined that if the unsupported draw rock should happen to fall on someone it could result in a fatal injury.

Section 75.202(a) provides that "[t]he roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts." The inspector stated that he observed miners working in the entry and on the belt line. Consequently, I conclude that ABM violated this regulation.

Inspector Clay testified that one of the loose hanging rocks was three feet by four feet and was four inches thick. He said that some of the small rocks could be scaled down with a pry bar and that the rest had to be supported by straps and bridge bars. Applying the Mathies criteria, I conclude that this violation was "significant and substantial."

Citation No. 4241742 also alleges a violation of Section 75.202(a). It says that "[d]islodged roof supports in the form of timbers were missing & broken at various locations along the No. 5 belt conveyor." (Gov. Ex. 14.) In connection with this violation, the inspector testified that he observed 20 to 25 timbers at various locations on the right and left rib of the No. 5 belt entry that were broken, missing or dislodged, which indicated to him that "the area obviously had been taking excessive weight from the overburden and the immediate roof located above that entry." (Tr. 70.)

Inspector Clay further testified that the timbers were necessary to provide adequate roof support in that area and that their absence could have resulted in a fatal roof fall. Based on this evidence, I conclude that the regulation was violated and that the violation was "significant and substantial."

Docket No. KENT 94-330

The first two contested citations in this docket were issued on November 3, 1993, for splices at different locations on a trailing cable for a continuous miner. Citation No. 4242751 states that "[a] permanent splice in the 4/0 3 conductor 480 volt energized cable extending to & serving the 101 Jeffery Continuous Miner on the 004 MMU was not effectively insulated and sealed so as to exclude moisture at a location approximately 60 feet from the starting box" in violation of Section 75.604(b), 30 C.F.R. 75.604(b). (Gov. Ex. 22.) Citation No. 4241752 sets out a identical violation for a splice "approximately 90 feet from the starting box." (Gov. Ex. 23.)

Section 75.604(b) states that "[w]hen permanent splices in trailing cables are made, they shall be: . . . (b) Effectively insulated and sealed so as to exclude moisture." Inspector Clay testified, with respect to the first splice, that "[t]he ends of this particular permanent splice were open, there was an opening an eighth to a quarter of an inch on each ends [sic] indicating that an insufficient amount of material, glue or putty, had been pressed or applied during the course of the splice." (Tr. 88.) He testified that he found the same problem with respect to the second splice.

According to the inspector, the glue or putty material "prevents water and moisture from coming inside of the boot [splice]." (Tr. 87.) The violations were abated by wrapping electrical tape at both ends of the splice.

Relying on language in the instructions which come with the splice kit, the Respondent argues the splices complied with the regulation without the tape. In particular, the Respondent points to the note to instruction No. 6 to support its position. Instruction No. 6 states "[l]ook for adhesive exposed and melted at each end of sleeve. Allow assembly to cool and adhesive to harden before shifting or bending splice area." The note says "[e]nds may be taped if insufficient cooling time is available. Tape may wear off with use. Loss will not impair function." (Resp. Ex. A.)

ABM apparently interprets the statement that loss of the tape will not impair the function of the splice to mean that the splice will still be moisture proof without the tape. I do not accept this interpretation for two reasons. First, it is more likely that the statement "loss will not impair function" refers to the function of the splice, that is that the cable be able to conduct electricity, not that the splice keep out moisture. Secondly, the note when read in its entirety plainly refers to putting tape over uncooled adhesive so that when the tape wears off with use, the adhesive will have cooled and function as it is supposed to.

In these two instances, the problem was not uncooled adhesive, but a lack of adhesive resulting in gaps at the ends of the splices which could admit water. Accordingly, I conclude that the splices violated Section 75.604(b).

In connection with his "significant and substantial" designation of these two violations, the inspector testified that the cable is frequently handled by the continuous miner operator, the miner helper, ventilation technicians and bridge operators; that if water got in the cable it could result in electrocution; and, that water was present in the mine from the coal seam, from the water spray system on the continuous miner, from the dust suppression system on continuous hauling system and from water sprayed to wet the roadways down. Based on this undisputed evidence, I conclude that the violations were "significant and substantial."

The next citation, Citation No. 4241754, alleges a violation of Section 75.214(a), 30 C.F.R. 75.214(a), because "[a] supply of supplementary roof support materials [were] not available at a readily accessible location on the 004 working section or within 4 cross cuts of the working section." (Gov. Ex. 24.) Section 75.214(a) requires that "[a] supply of supplementary roof support materials and the tools and equipment necessary to install the materials be available at a readily accessible location on each working section or within four crosscuts of the working section."

Inspector Clay testified that during his inspection of the No. 3 Entry he asked the section foreman where the supplementary roof support materials were located and the foreman could not show him any, other than 16 timbers and some 36-inch resin bolts, either on the section or within four crosscuts of the section. The inspector further testified that after he got out of the mine, a mine official told him that the material was in the No. 4 Entry, but he was not taken back into the mine and shown where the materials were located.

Even if there were supplementary roof support materials in the No. 4 Entry at a location within four crosscuts of the working section, ABM has still violated the regulation. If the section foreman does not know where the supplementary roof materials are located and cannot immediately take the inspector to them, it can hardly be said that the materials are at a "readily accessible" location. Therefore, I conclude that ABM violated Section 75.214(a).

As Section 75.214(b) indicates, the purpose of this regulation is to have additional materials available to be used if adverse roof conditions or a roof fall are encountered. In other words, this is material to be used in an emergency. As the Commission has stated, "[t]he hazards of roof falls are well known." Cyprus Empire Corp., 12 FMSHRC 911, 915 (May 1990)(citation omitted). The failure to have the material necessary to react to such an emergency in a readily accessible location is clearly a "significant and substantial" violation.

ÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄ

1. Section 75.214(b), 30 C.F.R. 75.214(b), provides that "[t]he quantity of support materials and tools and equipment maintained available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered or in the event of an accident involving a fall."

Citation No. 4241756 alleges a violation of Section 75.517, 30 C.F.R. 75.517, in that "[t]he remote line extending to the 102 Jeffrey continuous miner in use and located on the 005 MMU was not insulated adequately and fully protected at the location where it entered the rear of the machine connecting device. 2 exposed conductors were visible." (Gov. Ex. 26.) Section 75.517 requires that "[p]ower wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected."

Inspector Clay testified that the cable from the remote control to the continuous miner, "[w]here the cable entered the rear of the machine, either the cable had been pulled loose through some kind of strain or it had not been properly installed to begin with, because if a cable is loose, then two conductors can be seen." (Tr. 129.) He stated that the cable is handled frequently by the miner operator, the miner helper or a ventilation technician and that if the insulation wore off of the conductors during the normal course of mining, electrocution could result if someone touched the exposed wires.

I conclude that ABM violated the regulation as alleged. I further conclude that the violation was "significant and substantial." U.S. Steel Mining Co., Inc., 6 FMSHRC 1573 (July 1984).

Citation No. 4241757 is the next citation. It states that Section 75.514, 30 U.S.C. 75.514, was violated because "[t]he electrical connections made in the remote line at the No. 2 506 Jeffrey Bridge Carrier on the 005 MMU were not reinsulated at least to the same degree of protection as the remainder of the cable." (Gov. Ex. 27.) Section 75.514 requires, in pertinent part, that "[a]ll electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire."

The inspector testified that for some reason the outer jacket of the cable had been removed and that it had been replaced by wrapping electrical tape around the inner wires. He said that he concluded that the cable was not reinsulated to the same degree as the rest of the cable because the wrapped part of the cable was of a smaller diameter than the remainder of the cable. He explained that his determination that the wrapped section of the cable was not insulated to the same degree was "merely by observation." (Tr. 145.)

Inspector Clay further testified if one layer of the tape afforded the same degree of protection as the vulcanized rubber insulation on the cable, then that "would be fine and dandy," but that "[n]o one indicated to me that it did." (Tr. 154-55.) He related that the violation was abated by wrapping more tape around the repaired section, but he was not sure whether that tape was the same type as that used to repair it originally.

The evidence on this citation fails to establish a violation for two reasons. First, Section 75.514 only applies to connections or splices and there is no evidence that this was either. Secondly, the fact that the repaired section of the cable was not as large as the rest of the cable does not necessarily prove that the degree of protection was not the same. Accordingly, I conclude that ABM has not been shown to have violated the regulation and will vacate the citation.

The last contested citation is Citation No. 4241758. It alleges a violation of Section 75.400 because:

> Combustible material in the form of loose coal & float coal dust has accumulated on the mine floor to a depth of 3 to 8 inches over a distance of approximately 30 feet intermittently in the No. 3 Entry of the 005 MMU. This mine has a history of methane liberation and energized trailing cables are constantly on the mine floor. The area is dry and [sic]

(Gov. Ex. 28.)

The inspector testified that he observed accumulations of loose coal and float coal dust in the No. 3 Entry that he understood from the foreman had been left overnight. He stated that he based his statement in the citation that the "mine has a history of methane liberation" on an MSHA Laboratories "Analyses of Air Samples Received 02/07/94" for ABM which shows readings between 0.000 percent and 0.020 percent. (Gov. Ex. 21.)

ÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄ

2. The inspector opined that "[i]t was probably a splice -- it may have been a damaged area. I did not have them remove the tape to inspect the inside of the conductor." (Tr. 144.)

3. It appears that this situation would more properly have been cited under Section 75.517 of the Regulations.

FOOTNOTE 4.

The text of Section 75.400 is set out on p. 3, supra.

Based on this unrebutted evidence, I conclude that the violation occurred as alleged. The very low methane readings for the mine would not normally lead one to conclude that the mine has a history of methane liberation. However, I find that the violation was "significant and substantial" for the same reasons discussed on page 5, supra, concerning the accumulations of loose coal and float coal dust in the starter boxes.

CIVIL PENALTY ASSESSMENTS

Section 110(i) of the Act, 30 U.S.C. 820(i), sets out six criteria to be considered in determining an appropriate civil penalty. In connection with these criteria, the parties stipulated that ABM produced 305,605 tons of coal in the 12 months proceeding the proposed assessment in these cases, 238,284 tons of which were produced at the No. 1 Mine; that the proposed penalties are appropriate to ABM's size and will not affect its ability to continue in business; and that ABM demonstrated good faith in attempting and achieving rapid compliance after notification of the violations. (Tr. 13-14.) ABM's history of prior violations was also received into evidence. (Gov. Exs. 1A and 1B.)

Applying the six criteria to the contested and uncontested citations, I conclude that the penalties assessed by the Secretary are appropriate, with the exception of Citation No. 3164879, which I will reduce in accordance with my findings. I also conclude that the agreed upon penalties in the settled dockets are appropriate.

Accordingly, I have assessed a penalty for each citation as follows:

Docket No. KENT 94-320

Citation No. 4036879	$189.00
Citation No. 4039880	$300.00
Citation No. 4039881	$189.00
Citation No. 4039883	$ 50.00
Citation No. 4039884	$235.00
Citation No. 4039886	$189.00

Docket No. KENT 94-329

Citation No. 3164862	$309.00
Citation No. 3164863	$189.00
Citation No. 3164864	$309.00
Citation No. 3164865	$189.00
Citation No. 3164868	$189.00
Citation No. 4258059	$189.00
Citation No. 3164879	$ 50.00
Citation No. 3164880	$189.00
Citation No. 4241742	$189.00
Citation No. 4241744	$189.00
Citation No. 4241745	$189.00

Docket No. KENT 94-330

Citation No. 4241750	$189.00
Citation No. 4241751	$189.00
Citation No. 4241752	$189.00
Citation No. 4241754	$189.00
Citation No. 4241755	$189.00
Citation No. 4241756	$189.00
Citation No. 4241758	$189.00
Citation No. 4258021	$288.00

Docket No. KENT 94-533

Citation No. 3164772	$168.00
Citation No. 3164773	$168.00

Citation No. 3164809	$168.00
Citation No. 4241932	$ 50.00
Citation No. 3164811	$123.00
Citation No. 3164812	$123.00
Total Penalty	$5,743.00

ORDER

Citation No. 4241757 in Docket No. KENT 94-330 is VACATED and the civil penalty petition DISMISSED. Citation No. 4039883 in Docket No. KENT 94-320, Citation No. 3164879 in Docket No. KENT 94-329 and Citation No. 4241932 in Docket No. KENT 94-533 are MODIFIED to delete the "significant and substantial" designations and the citations are AFFIRMED as modified. Citation Nos. 4036879, 4039880, 4039881, 4039884 and 4039886 in Docket No. KENT 94-320; Citation Nos. 3164862, 3164863, 3164864, 3164865, 3164868, 4028059, 3164880, 4241742, 4241744 and 4241745 in Docket No. KENT 94-329; Citation Nos. 4241750, 4241751, 4241752, 4241754, 4241755, 4241756, 4241758 and 4258021 in Docket No. KENT 94-330; and Citation Nos. 3164772, 3164773, 3164809, 3164811 and 3164812 in Docket No. KENT 94-533 are AFFIRMED.

ABM Coal Company, Inc., is ORDERED to pay civil penalties in the amount of $5,743.00 within 30 days of the date of this decision. On receipt of payment, these proceedings are DISMISSED.

T. Todd Hodgdon
Administrative Law Judge
(703) 756-4570

Distribution:

Thomas A. Grooms, Esq., U.S. Department of Labor, Office of the Solicitor, 2002 Richard Jones Road, Suite B-201, Nashville, TN 37215-2862 (Certified Mail)

Roger Blair, Office Manager, ABM Coal Company, P.O. Box 220, Mary Alice, KY 40964 (Certified Mail)

/lbk