

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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May 29, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 94-79 ¹
Petitioner	:	A. C. No. 11-00877-04034
v.	:	
	:	
AMAX COAL COMPANY,	:	
Respondent	:	Mine: Wabash Mine

DECISION ON REMAND

Before: Judge Feldman

On August 19, 1994, following a hearing on the merits, I affirmed the significant and substantial (S&S) designation in Citation No. 4054831, and assessed a civil penalty of \$309.00, for the cited violation of the mandatory standard in 30 C.F.R. ' 75.400. 16 FMSHRC 1837. The violation, which was admitted by the respondent (Amax), concerned significant accumulations of loose coal and oil soaked loose coal, of approximately two weeks=duration, on a Joy continuous miner. *Id.* at 1838-39, 1841-43. Amax sought Commission review of the S&S determination and ultimately participated in oral argument before the Commission.

On August 28, 1996, the Commission vacated my S&S determination and remanded for further consideration of the evidence with respect to arguments presented on appeal. 18 FMSHRC 1355, 1357-59. The thrust of Amax=s argument is that impermissible, combustible coal dust accumulations on permissible pieces of equipment are not S&S in nature because the equipment is a Apotential,@rather than an Aactual,@source of ignition. On remand, I concluded the distinction between actual verses potential sources of ignition was not dispositive of the S&S question, as a potential ignition source in an underground mine, when viewed in the context of continued mining operations, can become an actual source of ignition at any time. 18 FMSHRC 1868, 1870-72 (October 1996). In this regard, I noted it was the degree of proximity of the combustible material to the potential ignition source that was determinative on the issue of S&S. *Id.* at 1871. Consequently, I determined the cited longstanding combustible material that was *located on* a potential ignition source constituted an S&S violation. *Id.* at 1872-73.

¹ This proceeding was consolidated with Docket No. LAKE 94-55, which is no longer at issue.

Amax's petition for review of the remand decision was denied by the Commission.

Amax petitioned for review in the U.S. Court of Appeals for the District of Columbia Circuit. On April 26, 1997, the Secretary moved to dismiss Amax's appeal as moot because she had modified Citation No. 4054831 by deleting the S&S designation. Accordingly, on May 8, 1997, the Court granted the Secretary's motion to dismiss Amax's petition as moot and remanded this matter to the Commission for reassessment of the appropriate civil penalty. Pursuant to the Court's Order, this proceeding was once again remanded to me by the Commission on May 21, 1997.

Civil penalties are assessed in accordance with the penalty criteria in section 110(i) of the Act, 30 U.S.C. ' 820(i). The gravity of a violation is a criterion to be considered. The Secretary's removal of the S&S designation is a tacit admission that the cited violation was not serious in nature. Thus, the Secretary's action warrants a corresponding reduction in the degree of gravity associated with the cited condition. Consequently, a civil penalty of \$50.00 shall be imposed for the subject citation.

ORDER

In view of the above, **IT IS ORDERED** that Amax Coal Company shall, within 30 days of the date of this decision, pay a \$50.00 civil penalty in satisfaction of Citation No. 4054831. Upon timely receipt of payment, Docket No. LAKE 94-79 **IS DISMISSED.**

Jerold Feldman
Administrative Law Judge

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