

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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April 6, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 94-400
Petitioner	:	A.C. No. 36-07416-03658
v.	:	
	:	Docket No. PENN 94-259
ENLOW FORK MINING COMPANY,	:	A.C. No. 36-07416-03651
Respondent	:	
	:	Enlow Fork Mine

DECISION

Appearances : Linda M. Henry, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for the Petitioner; Elizabeth S Chamberlin, Esq., Consolidation Inc., Pittsburgh, Pennsylvania, for the Respondent.

Before: Judge Weisberger

These cases, consolidated for hearing, are before me based upon Petitions for Assessment of Civil Penalty filed by the Secretary (Petitioner) alleging violations by Enlow Fork Mining Company (Respondent) of 30 C.F.R. ' 75.360(b)(1), 30 C.F.R. ' 75.360(b)(c), and 30 C.F.R. ' 75.400. Pursuant to notice, the cases were heard in Steubenville, Ohio on January 10, 11 and 12, 1995. Respondent filed a Post Hearing Brief on March 28, 1995. Petitioner filed Proposed Findings of Fact and a Memorandum of Law on March 29, 1995.

Findings of Fact and Discussion

1. Citation No. 3659960 and Order No. 3660021 (Docket No. PENN 94-400).

A. Introduction

1. Testimony of the Inspector

On November 15, 1993, MSHA Inspector Joseph Melvin Hardy inspected the B-3 Longwall Section of the Enlow Fork Mine. The section's tail drive, consisting of a gear box fluid coupler and an electric motor, was located at the tailgate. The tail drive was covered on top and also at the end farthest away from the headgate, and at the side next to the pan line.

The side closest the tailgate and the end next to the shields were not covered. After each pass of the longwall shear, the shields were moved forward one at a time.

Hardy indicated that approximately 9:05 a.m., he observed an accumulation of float coal dust around the legs of the shields, all the flat surfaces of the shields, and on the diagonal lemniscates of shields numbered 148-152, which were the shields closest to the tailgate.

Hardy described coal dust that was black in color, and "very dry to the touch" (Tr. 34) on the electrical boxes and control units of shields numbered 148-152. He said that the amount of coal dust was more than normally seen on inspections.

Hardy indicated that he also saw loose coal scattered around the shields, and on the gear case of the fluid coupler, and the drive motor. He also said that there were "heavy accumulations" (Tr. 25) of float coal dust, hydraulic oil and coal, packed in and around the gear case and surrounding areas. Hardy described the coal as saturated with hydraulic gear oil.

Hardy said that there was no evidence of water mixed with the oil. He said that the material was loose on the top but packed at the bottom. Hardy said that 90 percent of the housing of the fluid coupler was covered with float dust and oil, and 95 percent of the entire gear box was covered with float dust and oil. He said that there was an accumulation of hydraulic oil under the motor fluid coupler and gear box. He estimated that the area of the accumulation was 4 feet by 10-15 feet. Hardy also observed rags saturated with oil over the top of the fluid coupler. He also indicated that there was coal packed on the floor to a height of 2 1/2 feet. Hardy said that the hydraulic oil is combustible. According to Hardy, the coal being mined was part of the Pittsburgh Seam, which he described as being highly volatile.

Hardy issued a section 104(d)(1) order alleging a violation of 30 C.F.R. ' 75.400 which provides, as pertinent, as follows: "Coal dust including float coal dust deposited on rock dusted surfaces, loose coal, and other combustible materials, shall be cleared up and not be permitted to accumulate in active workings"

A preshift examination of the area was performed at 5:06 a.m. on November 15, but none of the conditions testified to by Hardy were noted or reported. In this connection, Hardy issued a section 104(d)(1) citation alleging that an adequate examination had not been performed in violation of 30 C.F.R. ' 75.360(b)(3).

2. Testimony of Respondent's Witnesses

Timothy C. Ferrell, a shield-man who worked the day shift on November 15, testified that there was a normal amount of dust on the drive, and a normal accumulation of loose coal between the legs of the shields. He indicated that there was oil on the toes of the last three shields. He said that at about 8:30 a.m., he hosed the top of the tail drive, and under the tail drive, and shields numbered 148-152. He said that there was a film of oil that extended several inches around the torque converter breather which he washed down.

Ferrell indicated that he did not notice any oily rags wedged on top of the hydraulic coupler, or anywhere around the tailpiece. He said that after he washed the various pieces of equipment, he did not see any dust or oil on top of the housing.

Ferrell indicated that when the cover was removed from the drive unit, he observed coal and rock packed on the face and tailgate end of the gear box. He said that the material was "mostly rock" (Tr. 326). He said the material was wet, but not oil soaked.

He indicated that no mining took place between the time he finished washing the equipment at 8:30 a.m., and 9:00 a.m.

Tim Keen, Respondent's Safety Inspector, was with Hardy on November 15. He noted oil on top of water accumulations between the toes of the shields, and a film of oil on the gear case and torque converter. Keen observed some dust in the rear of shields numbered 148-152 between their legs. He said that he saw rock dust on the lemnicates, but no coal dust.

Keen indicated that he did not consider any of the oil or coal that he observed to be a hazard. He indicated that he could not recall seeing any oil soaked rags. He said that when the cover of the tail drive was removed, he saw some coal, and a lot of rock dust between the face plate and the end plate. He said that the material looked wet, but he did not handle it. He did not consider that any of the conditions observed presented any fire or explosion hazard. He indicated that Hardy had pointed out float coal dust mixed with oil in the gear case.

William K. Stewart, was the longwall maintenance coordinator on November 15. In essence, he indicated that he did not see the conditions observed by Hardy.

B. Discussion

1. Violation of 30 C.F.R. ' 75.400

I note the conflict in the testimony between Hardy and Respondent's witnesses who were present in the area in question at the time of the inspection on November 15, regarding the existence of the conditions testified to by Hardy. I observed Hardy's testimony and found him to be a credible witness. There is no evidence in the record of any improper motive on the part of Hardy. (See, Texas Industry, Inc., 12 FM SHRC 235 February 1990 (Judge Melick). Importantly, Hardy's testimony finds support in notes taken by him contemporaneously with the inspection (GX3). In contrast, the testimony of Respondents' witnesses as to conditions observed on the day shift November 15, was based upon their recollection of conditions they observed more than a year prior to their testimony. None of Respondent witnesses' proffered any contemporaneous written notes to support their testimony.¹ For these reasons, I accept

¹Section Foreman William Young prepared a statement on November 16, 1993, setting forth his actions relating to the cleaning of the area in the midnight shift November 15. It does

Hardy's testimony and find that on 9:00 a.m., November 15, there existed accumulations of coal dust, loose coal, and oil, that had not been cleaned up. I thus find that Respondent violated Section 75.400, supra.

2. Violation of 30 C.F.R. ' 75.360

In essence, Hardy opined that it definitely took more than a shift for the material to have become packed on the gear box. He further indicated that the oil under the floor of the gear case was very obvious, and could be seen without bending down. Hardy said that the coal mixed with the oil on the drive motor was visible from the walkway. According to Hardy, loose coal, dust, and oil were visible when he first entered the area at issue, and he did not have to lift anything, or bend down to observe these conditions. He reasoned that these conditions would have been observed, reported, and noted in the preshift examination four hours prior to the time the conditions were cited.

William W. Young, worked the midnight to 8:00 a.m. shift on November 15, 1993. He indicated that he started his preshift examination at the tailgate at 5:00 a.m., and observed a film of oil on the toes of shields numbered 148-152. He indicated that he did not see any float coal dust or loose coal between the shields on the lemniscates. Nor did he see any layer of float coal in that area. According to Young, he did not see any accumulation of oil soaked coal in and around the tailpiece, and did not see material behind the gear box. He indicated that he did not see any oil soaked rags. He indicated that he did not consider "the conditions around the tailpiece to be hazardous" (Tr. 236). He also opined it does not take more than one shift for packed coal to be created.

According to Young, at 3:30 a.m., on November 15, he cleaned the light film of oil that he had observed on the motor drive and gear box with a "degreaser", (Tr. 206) and he also hosed off the motor, tensioning unit, and gear box. In a written statement prepared by Young on November 16, he indicated that at 12:45 a.m., on November 15, he had instructed a shield-man, Terry Pozum, to wash the oil film off the "toes of shields at the tailgate and tailgate drive area". Both Pozum and Raymond L. Touvell, another shield-man, who worked primarily at the headgate, testified to having washed shields numbered 148-152 and the tail drive, at various times during the night. Touvell indicated that the last time he was at the tailgate, he did not see any hydraulic fluid covering the floor, and did not see dry float dust covering the shield plates or the lemniscates. He also indicated that there was no coal dust black in color and hydraulic oil on the gear case, fluid coupler or drive motor. He stated that he also did not observe hydraulic oil on the cover of the drive box, and did not notice material packed in the rear of the gear case.

not set forth in any detail the conditions observed by him on the shift, with the exception of some oil on the bottom mixed with water, and "oil film" on the toes of shields.

I find Young's testimony credible, based upon my observations of his demeanor, that he did perform a preshift examination at approximately 5:00 a.m., in the area in question on November 15. In essence, Hardy opined that the conditions that he observed had existed four hours prior at the preshift examination, because the packed accumulations definitely had not occurred in one shift. However, he did not elaborate upon the basis for this conclusion. Coal dust is produced in the areas in question by the normal longwall mining process. The section continued to produce coal subsequent to the preshift examination, but there is no documentary evidence or eyewitness testimony of the number of passes made by the shear between the preshift examination, at 9:00 a.m., when the area was cited by Hardy. Touvell indicated that in general the shear makes six passes over a three hour period, and Young estimated that the shear had made six passes between 5:00 a.m., and the end of the shift. The record does not convincingly establish when the accumulations of oil observed by Hardy occurred. Both the gear case and tensioning unit are equipped with oil breathers which are designed to expel oil if pressure builds up in these items. Oil can be expelled when the equipment is started and stopped. William K. Stewart, the longwall maintenance coordinator, opined that if the belt "is shutting off and on, you could have as much as a gallon (of oil) on top of the unit" (Tr. 361).

Based on this record, I conclude that it has not been established that it was more likely than not that the accumulations observed by Hardy were in existence at the time of Young's preshift examination. I thus find that it has not been established that Young's examination was inadequate. I thus find that it has not been established that Respondent violated Section 75.360(b), supra.

3. Unwarrantable Failure

According to Hardy, in essence, the conditions that he observed were obvious and easily seen without even bending down. For the reason set forth above, I have concluded that these conditions were not in existence at the time of the preshift examination. Hardy indicated that he did not see anyone cleaning the accumulations when he made his inspection. On the other hand, Ferrell, who testified later on at the hearing, stated that when Hardy arrived at the tailpiece, "I believe I had a shovel and was cleaning the loose coal out from underneath the drive motor" (Tr. 321). Hardy, who testified on rebuttal, did not contradict this testimony of Ferrell.

Hardy indicated that, prior to the issuance of the citation and order at issue, he had discussed preshift procedures with various management officials. In the same connection, MSHA Supervisory Inspector Robert W. Newhouse, testified that on October 7, 1993, he discussed with management the basic elements of a preshift examination, and the proper course of action to be taken when it is determined that a hazard exists. He said they also had a discussion about what constitutes a hazard. Newhouse stated that in the first quarter of 1993, he discussed with Mine Management the need to clean accumulations.

Hardy indicated that on October 7, 1993, he met with mine management. He told them that he was not satisfied with the cleanup including the areas in question.

I do not find this testimony not probative of the degree of Respondent's negligence in allowing the specific materials at issue to have accumulated. Within this context, I find that the level of Respondent's was ordinary, and did not reach the level of aggravated conduct. (See, Emery Mining Corp., 9 FM SHRC 1997, 2203-2204 (1987). I thus find that the violation found, herein, was not the result of Respondent's unwarrantable failure.

4. Significant and Substantial

A "significant and substantial" violation is described in section 104(d)(1) of the Mine Act 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." 30 C.F.R. ' 814(d)(1). A violation is properly designated significant and substantial "if, based upon the particular facts surrounding the 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 FM SHRC 822, 825 (April 1981).

In Mathies Coal Co., 6 FM SHRC 1, 3-4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

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 a 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.

In United States Steel Mining Company, Inc., 7 FM SHRC 1125, 1129, 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 FM SHRC 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 FM SHRC 1866, 1868 (August 1984); U.S. Steel Mining Company, Inc., 6 FM SHRC 1573, 1574-75 (July 1984).

The critical element for analysis is whether the evidence establishes that there was a reasonable likelihood of an injury producing event, i.e., a fire or explosion contributed to by the violation of Section 75.400, supra. According to Hardy, the materials that had accumulated were combustible. Also, he noted the presence of ignition sources including the bearings on the drive shaft and gear case, and a 4160 volt drive motor connected to the drive case. However, the record does not establish that the physical condition of these or other potential ignition sources would have made the event of ignition reasonably likely to have occurred. The mine does liberate methane. However, there is no evidence that methane was present in an explosive range. Nor is there evidence that liberation of methane in explosive concentrations was reasonably likely to have occurred. According to Hardy, there were rags over the top of the fluid coupler and dry coal dust on electrical boxes. Although these conditions contributed to the possibility of an ignition, there is insufficient evidence to conclude that such an event was reasonably likely to have occurred. Hardy indicated that the gear box was very hot to touch and he could not keep his hand on it. There is no evidence of the specific temperature of the gear case, especially in relation to the flash point and autoignition temperature of the oils at issue. Hardy opined that because the accumulations on the gear box were packed, the cooling effect of air passing over the gear box would be impeded. He concluded that it was reasonably likely that the temperature of the gear box would reach the flash point of the oil issue of 325 degrees, and reach the autoignition temperature of 650 degrees. However, he did not provide any basis for these conclusions.

Stewart indicated that the gear box is cooled internally by water, and that this cooling system runs constantly. He also indicated that he takes the temperature of the gear box, and he has never seen it register a temperature of more than 197 degrees Fahrenheit.

Within the context of the above evidence, I find that it has not been established that a fire or ignition was reasonably likely to have occurred as a consequence of the accumulation of materials noted by Hardy. I thus find that it has not been established that the violation was significant and substantial (See, Mathies, supra; U.S. Steel, supra).

Taking into account the amount of the accumulations found by Hardy, and the presence of shield-men regularly working in the area, I find that should a fire or explosion have occurred, these persons could have suffered serious injuries. I thus find that the gravity of violation was relatively high. I find that a penalty of \$2,000 is appropriate.

II. Section 104(d)(1) Order No. 3660375
(Docket No. PENN 94-400) and Section 104(a)
Citation No. 3660374, (Docket No. PENN 94-259).

A. Petitioner's Evidence

In normal operations in the 2N belt entry, a scoop dumps coal on the feeder unit. Coal is then transported to the crusher where it is crushed. The coal then is moved to the tailpiece

and transported and dumped on the B-6 belt. In all these processes fine coal is created which falls on the belt structures and the floor.

On December 8, 1993, Joseph F. Reid, an MSHA Inspector, inspected the 2N belt feeder outby to the B6 belt. He indicated that starting at the belt feeder, and extending 200 feet outby, there was an accumulation of dry black coal dust. Reid indicated that there was dry loose coal on the mine floor, and very dry, fine, black float coal dust that was on and around the belt feeder unit. He described a pile of fine float coal dust on the floor that measured 4 feet by 16 feet, and 5 inches deep. Reid also observed a pyramid shaped pile of coal dust that, at the deepest point, was 18 inches deep, and was 2 feet long, and 3 feet wide. He said that the edge of this pile was under the belt, and was 6 inches removed from the belt.

Reid also observed coal dust on the cross members of the belt. He said these accumulations were black and very dry. According to Reid, there was coal dust on the belt structure that varied between an eighth of an inch to 2 inches deep. On direct examination he termed some of these materials float coal dust, but on cross examination indicated that the materials were a mixture of float coal and coal dust. Reid indicated that he touched all the areas that he cited and that none of the cited areas were wet "to my recollection". (Tr. 673). He also indicated that he examined the preshift examiner's records which indicated that a preshift examination was made of the area in question between 5 a.m. and 7 a.m., on December 8, and no hazards were noted.

Reid issued an order alleging a violation of Section 75.400 supra, and a citation alleging a violation of 30 C.F.R. ' 75.360(b)(1).

B. Respondent's Evidence

Donald E. Watson, a safety supervisor, was with Reid during the inspection. Watson testified that he did not find any accumulation of dust on the cross-members and bed-rail of the belt structure that Reid wanted cleaned. He indicated that Reid also wanted an 18-inch pile of float coal dust cleaned. Watson testified that the material was fine coal. He said that only the top was dry, but the bottom was wet. He indicated that he did not observe any float dust in the entry that was "distinctively" black in color. (Tr. 605).

Robert K. Price, the section foreman who was present on December 8, noted the presence of loose coal in front of the feeder, under the feeder, and behind the tail roller. According to Price, he said he did not see any hazardous float dust on the belt. He also indicated that he did not see any dust that was black. He describe the entry as being off-white. Price was asked to describe the thickness of the float dust on top of the feeder. He said "there was just like a haze going across it" (Tr. 625). He indicated that he could see the white color of the feeder through the "haze". He said that in order to abate the violation the float dust on the feeder was hosed off, "and the rest of the stuff was broomed . . . wiped off or hit with a broom real quick" (Tr. 624).

Howard A. McDaniel, was the belt foreman on the shift at issue. He indicated that the belt had been rock dusted on November 17. He described the area as being off-white. According to McDaniel, the bottom of the entry contained rock dust to a depth of 2 to 4 inches. He said that there were only 4 or 5 shovelfuls of material present behind the tailpiece. McDaniel said that he did not see any float dust that was dark in color. He said that he walked the tight side, and did not see any black material. He said that it took about 10 minutes to clean up the spillage material on the walk side.

C. Discussion

1. Violation of 30 C.F.R. ' 75.400

I find the testimony of Respondent's witnesses insufficient to contradict the testimony of Reid that there was a pile of coal dust, 2 feet by 3 feet, approximately 18 inches deep,² and another pile on the floor 4 feet by 16 feet, 5 inches deep, and other accumulations, 200 feet out by the tail on the belt structure. I thus find that Respondent violated Section 75.400, supra.

2. Violation of 30 C.F.R. ' 75.360(b)(1)

²Watson testified that he was standing with Reid "side-by-side" (Tr. 588) when the latter examined the pyramid-shaped pile he cited. Watson indicated that Reid did not measure the pile. Watson was asked whether Reid could have taken various measurements and not have been observed by him. Watson responded by stating that by Reid "was never out of my sight that day". (Tr. 611). It was elicited from Watson that at one point during the inspection he left Reid's presence in order to get the foreman, Robert Price. In response Watson testified that he did not go very far.

Based on my observation of his demeanor, I find Reid's testimony credible regarding the various measurement, he took of the cited accumulations. I find that the testimony of Watson is insufficient to rebut Reid's testimony as to measurements actually taken by him.

Essentially, Reid opined that an 18 inch pile of coal dust takes 1 to 2 shifts to accumulate, but he did not provide any basis for this opinion. He further opined that the accumulations occurred over more than 1 shift because (1) the materials that had accumulated in various areas were very black, (2) there were "heavy" (Tr. 474) accumulations on the floor, and belt structures, and (3) there was dust on the electric box, and on and around the feeder. He also indicated that the float dust on the belt structures and the side of the feeder unit "was very visible all the way to the B6 transfer area. (Tr. 464). In essence, it is Petitioner's position that these conditions existed at the time of the preshift examination, and should have been noted by the preshift examiner. There is no conclusive evidence as to how long the conditions noted by Reid had existed. Reid opined that it took more than one shift for the materials to have accumulated, but did not provide any basis for his opinion. In the same fashion, Watson opined that he did not think that the conditions were present "very long" (Tr. 589). He said "It could have been one shuttle car. It could have been two shuttle cars" (Tr. 589). However, he did not provide any basis for that opinion. Price estimated that the conditions had been in existence for 1 to 2 hours, but did not provide any basis for that opinion.

Weaver was asked whether he saw any float coal dust that was black in color. He stated that he did not notice any that was "clear black" (Tr. 534). Weaver stated that he could not recall seeing "black accumulations" (Tr. 548) on the belt structures, but that there may have been areas that were gray. He was asked whether the cross-members of the belt structure had "a dark deposit" on them (Tr. 546), and he answered that there may have been some gray material deposited. Weaver stated that he did not see any of the conditions noted by Reid, and did not feel that there were any hazards present.

Due to the extent of the accumulations observed by Reid, I conclude that it is more likely than not that at least some of them, in the condition observed by Reid, had existed 4 hours earlier during the preshift examination. Since these accumulations were not reported, I find that preshift examination was not adequate, and hence that Respondent did violate Section 75.360(b)(1), supra.

3. Unwarrantable Failure

According to Reid, he had previously issued a citation, alleging a violation of Section 75.400 supra, and at that time had discussions with management concerning the hazards of not recording an examination, and the necessity to clean the belts. I accept Reid's testimony that the material on the belt structure, and left side of the feeder unit was visible all the way to B6. I find that Respondent's conduct constituted more than ordinary negligence, and reached the level of aggravated conduct. Accordingly, I find that it has been established that the violation herein resulted from Respondent's unwarrantable failure. (See Emery, supra).

4. Significant and Substantial

According to Reid, the material that had piled up to 18 inches adjacent to the belt could, with continued operation, continue to grow, and then come in contact with the rollers. This contact could produce friction. However, Watson indicated that belt material used as a guard separated the accumulated coal dust from the rollers. Reid, on rebuttal, did not specifically rebut the positive testimony of Watson. Reid indicated on rebuttal that this guard would not have protected the fine coal from contacting the tail roller. His explanation is as follows:

Q. So where you have this 18-inch pile located, would the guard that is enclosed in blue have protected that 18-inch pile from contacting the tail roller?

A. No.

Q. Why is that?

A. Well, it was at the outby right side of the rubber guarding, which it only extended--

Q. What only extended?

A. The rubber guarding only extended to that point. This pile, which from previous testimony I heard, these piles normally occur on both sides.

Q. When you say the guarding only extends to "that point," what point are you referring to?

A. Where the pile of coal was.

Q. So are you saying that the rubber guarding is extended to the point where the pile of coal was and did not extend behind the pile of coal?

A. No-yes.

M s. Henry: It's confusing.

Judge Weisberger: The Witness' testimony is not clear. Don't lead him.

M s. Henry: Yes, you're right.

BY M S HENRY:

Q. Where this rubber guarding was, the point where this pile of coal fines was, where was it in relationship to the rubber guarding?

A . It was a little past the end, the right end of the rubber guarding.

Q. So when you say it was "a little past" the right end of the rubber guarding, was there rubber guarding behind this coal pile?

A . No. (Tr. 672-673).

I find that this testimony is unclear and cannot be relied upon.

There is no evidence of any frozen rollers. Nor is there any evidence that the belt was not aligned properly, and was rubbing the vertical structures of the belt. Nor is there any evidence that any float coal dust was in suspension. Although the existence of frozen rollers, hot rollers, and friction caused by the belt rubbing against the support legs are all possible, I find that it has not been established that such conditions were reasonably likely to have occurred. I thus find that it has not been established that there was a reasonable likelihood of an injury producing event, i.e., a fire or explosion occurring as a consequence of the accumulation of coal herein. I thus find that it has not been established that the violation was significant and substantial (See, Mathies, supra; U.S. Steel, supra).

III. Penalty

I find that since it was possible that as a result of the violations a fire or explosion could have occurred that the violations were of a high level of gravity. I find that a penalty of \$500 is appropriate for Citation No. 3660374 and that a penalty of \$5000 is appropriate for Order No. 3660375.

IV. Order

It is hereby ORDERED that Citation No. 3569960 be dismissed. It is FURTHER ORDERED that Order No. 3660021 be amended to indicate a violation that was not significant and substantial and not the result of Respondent's unwarrantable failure. It is further ORDERED that Citation No. 3660374 and Order No. 3660375 be amended to reflect the fact that the violations cited were not significant and substantial. It is further ORDERED that Respondent pay a total civil penalty of \$7,500 within 30 days of this decision.

A vram Weisberger
Administrative Law Judge

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