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MSHA V. EASTOVER MINING  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
February 4, 1982  
SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

Docket No. VA 80-84

EASTOVER MINING COMPANY

#### DECISION

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (Supp. III 1979). The withdrawal order issued in this case, Order 0682886, charges a violation of 30 C.F.R. § 75.507. This standard mirrors section 305(d) of the Mine Act which reads:

Except where permissible power connection units are used, all power-connection points outby the last open crosscut shall be in intake air.

30 U.S.C. § 865(d). At the hearing before the Administrative Law Judge, the parties stipulated:

(6) The Pump control box, which is the subject of Order No. 0682886, was located in the last open crosscut of the Right Section, which is a return airway.

(7) The subJect pump control box did not have permissible power connection points at the time subject order was issued.

The Administrative Law Judge found a violation and ordered payment of penalty. Although the judge found that the pump control box had not been energized, he reasoned that "whether or not the pump control box was ever energized is irrelevant to a determination of whether the regulation was violated." 2 FMSHRC at 3676.

We agree with the judge's conclusion that a violation was established. We do not, however, agree with his broad construction of the regulation in this case. The judge's construction of section 75.507 would lead to the result that a violation of section 75.507 always occurs whenever nonpermissible power-connection points are located in return air regardless of the circumstances.

The purpose of this regulation is to prevent methane gas

explosions. In the presence of methane gas, a source of ignition, such as arcing from power connections, can cause an explosion. The arcing of power

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connection points, however, is only possible if equipment is energized. Thus, the hazard the regulation is designed to prevent is present only when equipment is energized or can be energized. However, merely finding a power-connection point in return air does not necessarily absolve the operator simply because it is non-energized. In such cases, a violation may occur if the equipment has been, is about to be, could be, or habitually was, operated in return air. Cf. Solar Fuel Co., 3 FMSHRC 1384, 1385-86 (1981). We now apply the preceding principles to the facts of this case, based on the record as developed below. There is no question that the pump control box was not energized when the inspector issued the order. The foreman who placed the equipment in the return air during the shift prior to the one during which the inspection occurred testified that there was not enough cable to connect the pump to the power center. He also testified that he was familiar with the regulation and would not have left the control box in the return air if it were energized.

In this case it is claimed that the unit was not in fact located in the return air but was simply placed there temporarily until it could be moved to intake air. In other words, it is contended that the location was merely an interrupted transit to another position where it would be located as required by the regulation.

Nevertheless, the record does not contain a satisfactory explanation of why the control box was left in the return air.

Nor has Eastover completely dispelled our concern that the only reason the pump control box was not energized in return air was because the connecting cable was too short--a "problem" which unfortunately suggests an original intent to energize in return air and a possible intent to "remedy" the situation by means other than moving the control box into intake air. We will not, however, indulge in speculative hypotheses. The record before us does not allow us to say with assurance that Eastover clearly showed that the equipment could not or would not have been energized in return air. Our concern is underscored by the undisputed facts that the mine had a history of methane liberation (the major danger in the event of arcing) and .1 to .2 volume percent of methane was found at the working place when the order was issued.

For the foregoing reasons, we affirm the judge's conclusion that the standard was violated, on the basis articulated above.

Frank F. Jestrab, Commissioner

A.E. Lawson

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