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SOL (MSHA) V. US STEEL MINING
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 31, 1984
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. PENN 82-328

UNITED STATES STEEL
MINING CO., INC.

DECISION
On April 19, and June 1, 1982, inspectors from the Department of Labor's Mine Safety and Health Administration (MSHA) cited U.S. Steel Mining Company, Inc. for violations of mandatory safety standards at its Dilworth Mine. One citation alleged that U.S. Steel failed to comply with its approved ventilation plan in violation of 30 C.F.R. $ 75.316. The other citation alleged that loose, dry coal and float coal dust were permitted to accumulate under and around the tail piece of the belt conveyor in violation of 30 C.F.R. $ 75.400.
On both citation forms the inspectors marked a box to indicate their finding that the alleged violations were of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard. Both violations were abated within the time set by the inspectors. Pursuant to the Secretary of Labor's penalty assessment procedures set forth at 30 C.F.R. $ 100.3, MSHA proposed a $225 penalty for the violation of $ 75.316 and a $112 penalty for the violation of $ 75.400. U.S. Steel declined to pay the proposed assessments and exercised its statutory right to obtain a hearing before this independent Commission. Thereafter, the Secretary of Labor filed a petition with the Commission seeking civil penalties for the alleged violations. U.S. Steel's answer denied that the violations were properly classified as "significant and substantial" and asserted that the penalties should be reduced to $20 per violation "since none of the conditions cited had a reasonable possibility of causing a significant injury."
Following U.S. Steel's answer, an administrative law judge of the Commission ordered the parties to confer concerning possible settlement and to stipulate as to any matters not in dispute.
Subsequently, the Secretary modified both citations to state that the violations were "non-significant and substantial" and presented no

likelihood of injury. The parties then agreed to settle the matter, and the Secretary moved the administrative law judge to approve the settlement. In his motion for
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approval of settlement the Secretary stated that the significant and substantial designations had been deleted, that the negligence of U.S. Steel was "moderate", and the gravity of the violations was "null." The Secretary further stated that "in accordance with 30 C.F.R. $ 100.4 ... a $20 civil penalty would be appropriate." 1/
The administrative law judge denied the motion for approval of settlement and set the matter for hearing. The judge stated that he was not bound by the Secretary's regulation at 30 C.F.R. $ 100.4.
At the hearing before the judge the Secretary presented evidence regarding the existence of the violations, their gravity, the operator's negligence, the abatement of the cited conditions and the history of previous violations at the mine. 2/ U.S. Steel did not deny that the alleged conditions existed. Rather, it argued that the judge was bound by 30 C.F.R. $ 100.4 and, consequently, that he was required to assess $20 penalties for each violation.
In his decision the judge again rejected this argument and held that he was required to make a de novo determination of the appropriate penalty amounts. 5 FMSHRC 934, 936 (May 1983)(ALJ).
Citing the Commission's decision in Sellersburg Stone Company, 5 FMSHRC 287, 291 (March 1983), appeal docketed, No. 83-1630 (7th Cir. March 11, 1983), the judge held that he was bound by section 110(i) of the Act rather than by the Secretary's penalty assessment regulations and that he was required to determine the amount of each penalty by applying the six penalty criteria listed in section 110(i) in light of the evidence of record. The judge then made findings with respect to the penalty criteria and assessed a $75 penalty for each violation. 5 FMSHRC at 936-37.
On review U.S. Steel renews its argument that when a violation meets the criteria set forth in 30 C.F.R. $ 100.4, the Secretary of Labor's so-called "single penalty regulation", a Commission administrative law judge must assess a $20 penalty. U.S. Steel's argument evidences a continued misunderstanding of the civil penalty scheme of the Act and of the discrete roles of the Department of Labor and this independent Commission in effectuating that scheme. We previously have addressed this subject on

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1/ 30 C.F.R. $ 100.4, a regulation adopted by the Secretary, provides:
An assessment of $20 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness, and is abated within the time set by the inspector. If the violation is not

abated within the time set by the inspector, the violation
will be processed through either the regular assessment
provision ($ 100.3) or special assessment provision ($ 100.5).
2/ The parties stipulated as to U.S. Steel's size and that the
assessment of penalties would not affect its ability to continue in
business. See 30 U.S.C. $ 820(i).
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numerous occasions. See e.g., Secretary of Labor on behalf of
Milton Bailey v. Arkansas-Carbona Co., 5 FMSHRC 2042, 2044-46
(December 1983); Sellersburg Stone Co., supra; Knox County Stone Co.,
Inc., 3 FMSHRC 2478, 2480-81 (November 1981); Tazco Inc., 3 FMSHRC
1895, 1896-98 (August 1981); Shamrock Coal Co., 1 FMSHRC 469 (June
1979), aff'd 652 F.2d 59 (6th Cir. 1981). We reiterate our previous
holdings in an attempt to dispel any lingering misconceptions.
The Mine Act divides penalty assessment authority between the
Secretary of Labor and the Commission. The Secretary proposes
penalties. The Commission assesses penalties. The Secretary's
penalty proposals are made before hearing. In the event of a
challenge to the Secretary's proposal, the Commission affords the
opportunity for a hearing. Thereafter, the Commission assesses
penalties based on record information developed in the course of
the adjudicative proceeding. Sellersburg, 5 FMSHRC at 290-91,
Arkansas-Carbona, 5 FMSHRC at 2044-46. In assessing a penalty the
Commission and its judges are required to consider the six statutory
penalty criteria set forth in section 110(i) of the Act (30 U.S.C.
$ 820(i)). Thus, the Commission's penalty assessment is not based
upon the penalty proposal made by the Secretary, but rather on an
independent consideration of the six statutory penalty criteria and
the evidence of record pertaining to those criteria. Sellersburg,
5 FMSRHC at 291-92, Shamrock Coal, 1 FMSHRC at 469. The Commission's
independent penalty determination and assessment, based upon the
statutory criteria of section 110(i) of the Act, applies in all cases
contested before the Commission.
The Act does not condition the penalty assessment authority
and duties of the Commission upon the manner in which the Secretary
of Labor has chosen to implement his statutory responsibility for
proposing penalties. Therefore, it is irrelevant to the Commission
for penalty assessment purposes whether a penalty proposed by the
Secretary in a particular case was processed under $ 100.3, $ 100.4,
or $ 100.5 of the Secretary's regulations. The distinctions that
U.S. Steel attempts to draw in this proceeding between a $ 100.3 or
$ 100.4 penalty proposal by the Secretary are without merit and are
rejected.
U.S. Steel further argues that even if the Act literally requires
the Commission and its judges to consider the six penalty criteria

when assessing a civil penalty, we nevertheless should hold, as a matter of policy, that when a violation poses little probable harm it will not be assessed through consideration of all six statutory penalty criteria. U.S. Steel adopts the Secretary's position, as published in the comments accompanying the promulgation of the Secretary's Part 100 regulations, that "when the gravity factor is low and good faith is established through abatement, ... analysis of the negligence, size and history criteria is [not] appropriate or necessary." 47 Fed. Reg. 22292 (May 1982). We decline to accept U.S. Steel's suggestion. Such a policy would, in our opinion, unwisely restrict the wide discretion the Act affords the Commission in assessing civil penalties commensurate with the evidence of record. This discretion is necessary if, as Congress intended, civil penalties assessed under the Act are effectively to encourage operator compliance with the Act and its standards and to protect the public interest. See Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977 at 629, 632-33.

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In this proceeding the Commission's administrative law judge considered, as he was required to do, the six statutory penalty criteria set forth in section 110(i). The findings he made with respect to each of the criteria faithfully reflect the evidence and information before him. The penalties he assessed are commensurate with the findings and consistent with the statutory criteria. Accordingly, the decision of the administrative law judge is affirmed.

Frank F. Jestrab, Commissioner

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