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SOL (MSHA) V. US STEEL MINING
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
March 28, 1985

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. PENN 82-322

U.S. STEEL MINING CO., INC.

DECISION

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982) ("Mine Act"). The issue is whether a Commission administrative law judge correctly held that the violation of a mandatory safety standard by U.S. Steel Mining Co. ("U.S. Steel") was "significant and substantial" within the meaning of section 104(d)(1) of the Mine Act, 30 U.S.C. 814(d)(1). For the reasons that follow, we affirm.

On June 18, 1982, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") conducted an inspection of U.S. Steel's Maple Creek No. 2 mine, located at New Eagle, Pennsylvania. During the inspection of the mine's haulage area the inspector observed that the power wires for an energized water pump, which came from the 550-volt trolley wire and passed through the pump's metal starting box, were not protected with a required bushing. The wires' insulation was intact and showed no excessive signs of wear. The inspector issued a citation alleging a violation of 30 C.F.R. 75.515.1/ The inspector also found that the violation was significant and substantial.

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1/ 30 C.F.R. 75.515 requires in part: "When insulated wires other than cables pass through metal frames, the holes shall be substantially bushed with insulated bushings."

U.S. Steel did not contest the fact of violation, but challenged the inspector's significant and substantial finding. At the hearing, witnesses for both MSHA and U.S. Steel agreed that at the time the citation was issued, there was no chance of the missing bushing causing an electrical shock because the insulation on the power wires was intact. However, the witnesses disagreed as to the prospective danger if the insulation on the wires was subsequently cut by the sharp edge of the metal box that they contacted. U.S. Steel's general maintenance foreman stated that the pump had several safety features that would eliminate the risk of electrical shock. He testified that if the insulation on the power wires wore through and the exposed conductors contacted the metal frame of the starting box, the circuit fuses would short circuit the pump, protecting any person coming in contact with the frame against electrical shock. The general maintenance foreman also stated that, apart from the primary grounding system, there was an additional frame ground system on the pump, that connected the frame to the rail of the nearby haulage track. If the fuses did not short circuit the pump, this additional ground would harmlessly ground electricity through the rail.

The inspector agreed that the pump had the built-in safety devices and that the devices were operational at the time he issued the citation. The inspector denied, however, that all of the devices would have to fail before anyone could be shocked. He testified that if the insulation on the power wires was damaged or broken, the ground wire could be severed and that a person touching the pump might then make a better ground than the frame ground itself. In such a case the fuse would not short circuit the pump and the person could be shocked or electrocuted.

The administrative law judge concluded that the violation was significant and substantial. The judge found that the pump vibrated and, in the absence of a bushing, the vibration could cause a cut in the insulation. He accepted the testimony of the inspector that the cut in the insulation could cause the pump to become the ground and, if the circuit protection failed, anyone touching the pump frame could be shocked or electrocuted. The judge concluded that the violation made such an occurrence reasonably likely. 5 FMSHRC 1788 (October 1983) (ALJ).

On review, U.S. Steel argues that the facts indicate that the occurrence of the events necessary to create the hazard, the cutting of the wires' insulation and failure of the electrical safety systems, are too remote and speculative for the hazard to be reasonably likely

to happen and, consequently, that the judge erred in concluding that the violation was significant and substantial.

We have held previously that a violation is properly designated significant and substantial "if, based on 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 FMSRHC 822, 825 (April 1981). In Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984), we 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 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.

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. See 6 FMSHRC at 1836.

Applying these principles to the instant case, we affirm the judge's holding that the cited violation properly was designated significant and substantial. U.S. Steel's only witness did not deny that the missing bushing could contribute to a shock hazard. Rather, because of the pump's circuit fuses and its dual grounding system, he described the chance of miners being shocked or electrocuted as "very slight." Moreover, the inspector effectively testified that if the cited condition were left uncorrected an accident involving shock or electrocution was "reasonably likely" to occur. The inspector's statement that a person could serve as a better ground than the frame ground itself if the insulation on the wires was cut, was not refuted by U.S. Steel, and was accepted by the judge. The fact that the insulation was not cut at the time the violation was cited does not negate the possibility that the violation could result in the feared accident. As we have concluded previously, a determination of the significant and substantial nature of a violation must be made in the context of continued normal mining operations. U.S. Steel Mining Co., 6 FMSHRC 1573, 1574 (July 1984). The administrative law judge correctly considered such continued normal mining operations. He noted that the pump vibrated when in operation and that the vibration could cause a cut in the power wires' insulation in the absence of a protective bushing. In view of the fact that the vibration was constant and in view of the testimony of the inspector that the insulation of the power wires could be cut and that the cut could result in the pump becoming the ground, we agree that in the context of normal mining operations, an electrical accident was reasonably

likely to occur.

Accordingly, we conclude that substantial evidence supports the judge's conclusion that the violation in this case was properly designated significant and substantial. U.S. Steel additionally argued

on review that the sole appropriate penalty for a violation that is not significant and substantial is $20. Although in view of our holding, it is unnecessary to reach that issue here, we previously have rejected this argument. See U.S. Steel Mining Co., Inc., 6 FMSHRC 1148 (May 1984).2/

Richard V. Backley, Acting Chairman
James A. Lastowka, Commission
L. Clair Nelson, Commissioner

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2/ Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves a panel of three members to exercise the powers of the Commission.

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Distribution

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