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SOL (MSHA) V. U.S.STEEL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	CIVIL PENALTY PROCEEDINGS
v.	Docket No. PENN 83-103 A.C. No. 36-05018-03512
U.S. STEEL MINING COMPANY, INC., RESPONDENT	Docket No. PENN 83-142 A.C. No. 36-05018-03516
LOCAL 2300, UNITED MINE WORKERS OF AMERICA, INTERVENOR	Docket No. PENN 83-199 A.C. No. 36-05018-03522 Cumberland Mine

DECISION

Appearances: Matthew J. Rieder, Esq., and William M. Connor, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner;
Louise Q. Symons, Esq., United States Steel Corporation, Pittsburgh, Pennsylvania, for Respondent.

Before: Judge Melick

These cases are before me upon the petitions for civil penalty filed by the Secretary, pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," for violations of regulatory standards. The general issues before me are whether U.S. Steel Mining Company, Inc. (U.S. Steel) has violated the regulations as alleged, and, if so, whether those violations are of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard i.e. whether the violations are "significant and substantial." If violations are found, it will also be necessary to determine the appropriate penalty to be assessed in accordance with section 110(i) of the Act.

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Citation No. 2013059 alleges a violation of the standard at 30 C.F.R. 75.316 and reads as follows:

The approved ventilation and methane and dust control plan was not being complied with. Water sprays were inoperative on the section feeder on 13 Butt section (007) located in No. 3 entry approximately 20 feet outby survey spad 6193. The water sprays were inoperative due to a missing water hose. The feeder was in operation at the time of finding.

The relevant provisions of the operator's methane and dust control plan are as follows: "Sprays are provided at shuttle car discharge points, belt conveyor transfer points, and underground dumps to allay dust."

Respondent does not dispute that a violation occurred as charged, but argues that the violation was not "significant and substantial." In order to establish that a violation of a mandatory safety standard is "significant and substantial," the Secretary 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. Secretary v. Mathies Coal Company, 6 FMSHRC 1 (1984).

The essential facts surrounding the violation are not disputed. According to Inspector Thomas A. Woods of the Federal Mine Safety and Health Administration (MSHA), the cited water sprays were not operating because the hose providing water to the feeder had not been extended and connected after the feeder had been advanced on December 2, 1982. Since the condition was cited on December 7, 1983, it is apparent that the condition had existed for 5 days and six production shifts. In addition, according to Inspector Woods, visibility was so impaired by the coal dust in the section that he had to feel his way along the ribs to guide himself. Under the circumstances, supervisory personnel could easily have discovered and corrected the deficiency and were negligent in failing to do so.

According to Woods, the excessive dust at the feeder/crusher was caused by the absence of the water sprays. When combined with potential ignition sources from power

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cables, shuttle cars and the continuous miner, the excessive dust created a reasonable likelihood of fire or explosion. The hazard was aggravated by the fact that the Cumberland Mine is a "gassy mine," liberating more than 6,000,000 cubic feet of methane in a 24-hour period. The decreased visibility created by the excessive dust also made it reasonably likely that the shuttle car operator would strike pedestrian miners causing serious injuries or death.

The operator maintains that the violation was not "significant and substantial" because at the time the citation was issued, the belt had not operated for at least 8 hours. According to the operator, when the belt does not run for such a period of time, the bottom of the belt dries out. There is accordingly a dusty period when the shift begins because the sprays have no effect upon dust on the bottom of the belt. It further argues that 36 gallons of water per minute are sprayed on the coal as it is mined, so the coal is already wet when it is dumped at the cited feeder/crusher. This theoretical contention is based upon the testimony of Robert Bohach, a U.S. Steel safety engineer who was not present at the time the violation occurred. Based upon the actual observations of Inspector Woods, the excessive dust was primarily caused by the absence of water spraying over the coal as it was being crushed. I give the greater weight to the first-hand testimony of Inspector Woods.

Under all the circumstances, I find that the violation was "significant and substantial" and constituted a serious hazard. The condition was abated in a timely and good faith manner.

Citation No. 2013060 also charges a violation of the operator's ventilation and methane and dust control plan under the standard at 30 C.F.R. 75.316. The relevant provisions of the operator's plan read as follows: "[f]low of air in belt may be in the direction of belt flow or against depending on individual section requirements or limitations. If air travels against flow of coal, air will be dumped to return it last crosscut feeder." Citation No. 2014246 and Citation No. 2011680 also charge violations of the operator's ventilation plan for using air coursed through belt haulage entries to ventilate active working places. Violations are additionally charged in these citations under the provisions of 30 C.F.R. 75.326.

The violations alleged and the facts supporting the preceding three citations are not disputed. The operator

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argues that the violations were not "significant and substantial." Inspector Woods, Moats and Sokoloff all testified that belt air ventilating the working section would likely result in smoke from hot rollers on the beltline moving toward the miners working at the face, thereby resulting in serious smoke inhalation hazards to those miners. The operator's witness, Safety Engineer Bohach, acknowledged that the most likely place for a fire in a mine would be the beltline. In addition, Inspector Moats cited experiences in a nearby mine where smoke was caused by a hot roller and a beltline burned through after jamming.

According to Mark Skiles, a U.S. Steel safety inspector, there was no hazard in allowing belt air to move over the face area because belt fires are ordinarily "smokers" and belt fires are therefore easily detectable. Thus according to this view, the miners would be expected to discover the fire hazard before being seriously endangered. The contention is, however, dangerously speculative and without empirical support.

The operator contends in its posthearing brief that the beltlines are subject to preshift examinations, that the belts are fire resistant, that heat sensors are located along the beltline and that Cumberland Mine has never had a belt fire. Assuming that these contentions are accurate, they do indeed serve to mitigate the degree of hazard. They are not, however, sufficient in my opinion to reduce the "significant and substantial" nature of the violation.

U.S. Steel further argues that belt air is permitted by MSHA to ventilate the faces of so-called "pre-1970" mines, such as the Gateway Mine, a mine with a history of belt fires, whereas it is deemed by MSHA to be a "significant and substantial" violation at the Cumberland Mine, a mine with no history of belt fires. MSHA suggests in response that the "pre-1970" mines that are permitted to ventilate the faces with belt air may be required to take other steps to avoid the hazard of belt smoke at the faces though MSHA fails to reveal what those steps might be. Since I am not in any event evaluating whether there has been a "significant and substantial" violation in a "pre-1970" mine and since insufficient evidence has been presented to permit any valid comparisons, I find the operator's argument to be unpersuasive.

Under the circumstances of this case, I am convinced that the violations are "significant and substantial" and a serious hazard. I also find that the operator was negligent

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in failing to detect the incorrect air movement during pre-shift examinations. Indeed it appears that the operator intentionally permitted the violation. The conditions were abated in a timely good faith manner.

In determining the amount of penalties in these cases, I am also considering that the operator is large in size and has a fairly substantial history of violations.

ORDER

The U.S. Steel Mining Company, Inc., is hereby ordered to pay the following civil penalties within 30 days of the date of this decision:

Citation No. 2013059	\$	250
Citation No. 2013060		250
Citation No. 2014246		250
Citation No. 2011680		250

Total \$1,000

Gary Melick
Assistant Chief Administrative Law Judge