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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

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

v.

M. A. WALKER COMPANY, INC.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 88-121-M  
A. C. No. 15-00112-05516

Docket No. KENT 88-123-M  
A. C. No. 15-00111-05515

Docket No. KENT 88-205-M  
A. C. No. 15-00112-05520

Clover Bottom Underground

DECISION

Appearances: Mary Sue Ray, Esq., for the Secretary of Labor;  
Mr. David Riley, Office Manager, for Respondent

Before: Judge Fauver

These cases were brought by the Secretary of Labor for civil penalties under 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

Based upon the hearing evidence and the record as a whole, I find that a preponderance of the substantial, reliable, and probative evidence establishes the following Findings of Fact and additional findings in the Discussion below.

FINDINGS OF FACT

1. At all times pertinent, Respondent operated two underground mines, known as the Indian Creek Underground Mine and the Clover Bottom Underground Mine, which produced crushed limestone sold in or substantially affecting interstate commerce.

Citation 2861521

2. This citation, issued on December 2, 1987, alleges a violation of 30 C.F.R. 57.12028. Respondent failed to perform the required annual continuity and resistance tests of the mine grounding system. The last tests performed by Respondent at the cited mine were on November 18, 1986.

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3. This was the third year that Respondent failed to perform the required tests in a timely fashion. Respondent did not have its own grounding bed at this mine until one was installed in 1985 by the Technical Support Unit (Tech Support) of the Mine Safety and Health Administration. The testing of the adequacy of the ground bed was performed for the operator by Tech Support as a part of the setting up of the bed. At that time, it was explained to the operator that the ground bed would have to be tested on an annual basis. After this initial setup, Respondent was cited in November 1986, for the failure to perform the required tests on the mine's grounding system.

4. The continuity test is designed to detect any breaks in the grounding system, to determine whether there is a continuous path from the electrical equipment to the ground bed.

5. The resistance test measures the impedance of the ground bed (metal rods in the earth) from one point to another. The integrity of the ground bed may be affected by various conditions, e.g., acids in the dirt, vehicles running over the surface, or a broken wire. If the ground bed is broken, then in the event of an electrical fault the current may shock any person who touches the equipment or is standing in close proximity to it.

Citation 2861527

6. This citation, issued on January 26, 1988, alleges a violation of 30 C.F.R. 57.12016. A mine foreman, Glenn Brewer, and two mine employees were performing repair work on the primary jaw crusher, about 100 feet underground, without locking out the equipment or taking other measures which would prevent the machine from being energized without the knowledge of the men working on it. The miners had removed some guards from the machine. One miner was down on the conveyor belt, the other was at the base of the crusher, and the foreman was on the landing on top of the jaw crusher.

7. The power switch to energize or de-energize the primary jaw crusher was in a control building above ground. No one was in the control building at the time. There was a lock in the hasp of the door to the control building, but the hasp was not closed and the lock was not fastened, nor did it give an appearance that the building was closed to personnel. When the mine inspector entered the building, he did not have to remove the lock. There was power available at the control building.

8. There were start-stop switches at the jaw crusher. However, these were not a reliable means of de-energizing the machine.

Order-Citation 2861528

9. This order-citation, issued on January 26, 1988, alleges a violation of 30 C.F.R. 57.15002. Two employees, who were working under the direction of the mine foreman and in view of the foreman, were not wearing hard hats. Both miners were at the primary jaw crusher, below the level where tools were located and would be handed down. They were underground, where there was a danger of falling rock from the roof or sides of the pillars. Roof and pillar conditions in limestone mining change from day to day. The protection of hard hats is basic to mining as demonstrated by the dents in miners' and mine inspectors' hard hats caused by falling objects or bumping into objects underground.

Order-Citation 2861529

10. This order-citation, issued on January 26, 1988, alleges a violation of 30 C.F.R. 57.4161. An open fire heater was burning underground on a platform at the primary jaw crusher where two miners and mine foreman Glen Brewer were working. The heater, which was a diesel fuel heater known as a salamander, was on the platform of the primary jaw crusher, about eight feet off the ground. A salamander is a metal cone-shaped heater. The base is 18-20 inches high, and the exhaust stack is about nine inches high. Salamanders can easily be turned over and spread a liquid fire. In addition, they emit a high level of carbon monoxide which may accumulate due to the confined space and confined ventilation underground.

11. Respondent was cited in December 1986, for having a salamander burning underground at the primary jaw crusher. When the citation was issued, the mine inspector discussed the prohibition against having open flames underground with Glenn Brewer, mine foreman. Also, before the subject order-citation was issued, Vernon Denton, field office supervisor, MSHA, held a conference with three representatives of Respondent: Lyle Walker, Glenn Brewer, and Dave Riley, safety director. Mr. Denton explained in detail to all three individuals the prohibition against the operation of a salamander underground.

Order-Citation 2861909

12. This order-citation, issued on April 13, 1988, alleges an imminent danger and violations involving the mine exhaust fan. The mine fan was a mobile fan on a trailer base with rubber tire wheels. The fan had eight-foot propeller type blades, driven by a 20 horse power, 480 volt motor. The fan was sitting at ground level. The blades were not adequately guarded. The fan was behind a storage trailer and adjacent to the dump area of the mine. The area was well traveled by foot traffic as indicated by footprints around the base of the fan. The fan was turned on and off daily by a miner walking up to the fan. The order-citation contains four citations, each having No. 2861909, and identified as No. (1), (2), (3), or (4):

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(1) This citation alleges that the fan propeller blades were not adequately guarded, in violation of 30 C.F.R. 57.14001. The bottom five feet of the fan had a loosely constructed wire fence material as a guard. The mesh in the material was so large that someone could stick his hand through it. The guard had deteriorated due to the vibration of the fan and left exposed moving parts accessible to persons traveling in the area. The fan blades were completely exposed at the top three feet of the fan.

(2) This citation alleges that the 480 volt motor for the fan was not grounded, in violation of 30 C.F.R. 57.12025. The fan had three wire circuits (three phase), and a ground wire was not provided.

(3) This citation alleges that the 20 horsepower motor for the fan was not provided with a lead make-up box cover, in violation of 30 C.F.R. 57.12032. There was no cover plate on the lead make-up box.

(4) This citation alleges that there were several poorly insulated splices in the 480 volt power cable to the fan, in violation of 30 C.F.R. 57.12013. The splices in the cable were not properly insulated, and left the three conductors exposed to contact, damage, moisture, dust, and dirt.

#### Citation 286135

At the hearing, the parties moved for approval of a settlement of this citation, with payment of the \$85 penalty originally proposed. This motion was granted, and the penalty is included in the Order below.

#### DISCUSSION WITH FURTHER FINDINGS

#### Citation 2861521

This citation marked the third year that Respondent failed to perform the required continuity and resistance tests in a timely fashion. The operator did not have its own grounding bed until one was installed in 1985 by the Tech Support Unit of MSHA. The testing of the adequacy of the ground bed was performed for the operator by Tech Support as a part of the setting up of the bed. At that time, it was explained to Respondent that the ground bed would have to be tested within a year. Despite this, Respondent was found in violation in November 1986, for failing to test the ground bed resistance and continuity of the grounding system.

At the hearing, Respondent did not consider the tests significant (Tr. 45), despite the fact that Tech Support instructed the operator as to the importance of maintaining a ground bed and performing these tests annually.

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Failure to test the ground bed annually is a serious matter. Even where an electrical utility company maintains its own ground bed outside the mine, the failure of the mine operator to perform these tests at the mine can result in a fatality.

Respondent was highly negligent in failing to perform the required tests. It was given ample assistance by Tech Support in 1985, but was cited the next year for failing to conduct the required tests. It was again found in violation in January 1988. Respondent's history shows indifference concerning the need for the tests and the seriousness of failing to perform them.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$300 is appropriate for this violation.

Order-Citation 2861527

The foreman and two miners were working at the primary jaw crusher, to do repair work, but the circuit for the machine was not locked out. Respondent's lockout procedure required that the control room, above ground, which supplied power to the primary jaw crusher, be locked while the machine was de-energized during repair work. However, the control room was not locked and the power circuit to the jaw crusher was not locked out. The foreman knew that this was the case. Failure to de-energize and lock out this dangerous equipment during repairs constituted aggravated conduct which showed an "unwarrantable" failure to comply with the safety standard. It was also a "significant and substantial" (S and S) violation.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$500 is appropriate for this violation.

Order-Citation 2861528

The inspector observed two miners, working at the primary jaw crusher, who were not wearing hard hats. They were working under the direction of their foreman, Glenn Brewer. The violation was obvious and serious. The two miners were below the level on which tools were located, and they were underground. There was a clear danger of being struck by falling tools or falling rock from the mine roof or ribs. The need for the protection of hard hats is basic to mining, as demonstrated by the dents commonly seen in hard hats caused by falling objects and bumping into objects underground. Considering the obvious danger and the foreman's plain view of this violation, Respondent's conduct rose to the level of an "unwarrantable" failure to comply with the standard.

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Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$500 is appropriate for this violation.

Order-Citation 2861529

Respondent violated 30 C.F.R. 57.4161 by having an open flame heater burning underground. The diesel fuel heater (a "salamander") was on a platform at the primary jaw crusher where two miners and their foreman, Glenn Brewer, were working. This was a significant and substantial violation, which presented a clear risk of a mine fire and emission of a high level of carbon monoxide that could reasonably be expected to cause serious injuries.

The operator was cited for this same condition a month earlier. When issuing the previous citation, the mine inspector discussed the prohibition against having open flames underground with Glenn Brewer, foreman, and, before the date of the subject order-citation (January 26, 1988), MSHA supervisor Vernon Denton held a conference with management representatives Lyle Walker, Glenn Brewer and Dave Riley; at the conference he explained in detail the prohibition against operation of a salamander underground. Respondent's repeat of the same violation was flagrant, and showed an unwarrantable failure to comply with the safety standard.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$1,000 is appropriate for this violation.

Order-Citation 2861909

This order-citation was issued for an imminent danger and violations involving the mine exhaust fan. In conjunction with a 107(a) order, the inspector issued four 104(a) citations. Each citation has the same number as the order. For identification, the following citations are numbered in the order as (1), (2), (3), and (4).

(1) Respondent violated 30 C.F.R. 57.14001 because the fan blades (8-feet, propeller type blades) were not adequately guarded and were accessible to contact by personnel. The person turning the fan on and off was at risk of coming in contact with the blades. This was an S and S violation, due to ordinary negligence.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$150 is appropriate for this violation.

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(2) The 480 volt motor for the fan was not grounded, in violation of 30 C.F.R. 57.12025. This condition presented a serious risk of electric shock. This was an S & S violation, due to ordinary negligence.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find a penalty of \$150 appropriate for this violation.

(3) The 20 horsepower motor for the fan was not provided with a lead make-up box cover, in violation of 30 C.F.R. 57.12032. The regulation requires that cover plates on electrical equipment and junction boxes be kept in place at all times except during testing or repairs. The motor was energized and the wire connections in the box were exposed to contact, moisture, damage, dust and dirt. This was an S and S violation, due to ordinary negligence.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$150 is appropriate for this violation.

(4) The 480 volt cable to the fan had several improperly insulated splices, in violation of 30 C.F.R. 57.12013. The splices left the conductors exposed to contact, damage, moisture, dust, and dirt. This was an S & S violation, due to ordinary negligence.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$150 is appropriate for this violation.

#### CONCLUSIONS OF LAW

1. The judge has jurisdiction over these proceedings.
2. Respondent violated the safety standards as charged in Citations and Order-Citations Nos. 2861521, 2861527, 2861528, 2861529, 2861909 and 286135.

#### ORDER

Respondent shall pay the above civil penalties of \$2,985 within 30 days of this Decision.

William Fauver  
Administrative Law Judge.