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SOL (MSHA) V. C. W. MINING  
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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

CIVIL PENALTY PROCEEDING

Docket No. WEST 90-79  
A.C. No. 42-01697-03609

v.

Docket No. WEST 90-94  
A.C. 42-01697-03610

C. W. MINING COMPANY,  
RESPONDENT

Bear Canyon No. 1 Mine

DECISION

Appearances: Robert J. Murphy, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado, for  
the Secretary of Labor (Secretary);  
Carl E. Kingston, Esq., Salt Lake City, Utah,  
for C.W. Mining Company (C.W.)

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for eight alleged violations of mandatory health and safety standards promulgated pursuant to the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the Act). Both parties engaged in pretrial discovery. Pursuant to notice, the cases were called for hearing on the merits on July 17, 1990, in Salt Lake City, Utah. On the record, I ordered the cases CONSOLIDATED for the purposes of hearing and decision. Counsel for the Secretary stated that citation 3411629 would be vacated and that the parties had agreed to a settlement with respect to citations 3077726 and 3412009. I indicated on the record that I would affirm the vacation of the citation mentioned above and would approve the proposed settlement of the other two violations. Donald E. Gibson and Terrance Dinkel testified on behalf of the Secretary. Kenny Defa, Nathan Atwood, Gaylen Atwood and Cyril Jackson testified on behalf of C.W. At the close of the hearing, counsel for both parties waived their rights to file post-hearing briefs, and each argued his case of the record. I have considered the entire record and the contentions of the parties and make the following decision.

FINDINGS OF FACT

1. At all times pertinent hereto, C.W. was the owner and operator of an underground coal mine in Emery County, Utah, known as the Bear Canyon No. 1 Mine.

2. C.W. produced 211,438 tons of coal during the first nine months of 1989. It is a medium sized operator.

3. During the period from July 5, 1987 to July 4, 1989, C.W. had 242 paid violations; during the period October 24, 1987 to October 23, 1989, it had 213 paid violations. Of these one was a violation of 30 C.F.R. 75.524, four were violations of 30 C.F.R. 75.313, 17 were violations of 30 C.F.R. 75.503 and 27 were violations of 30 C.F.R. 75.400. I find that this history is not such that penalties otherwise appropriate should be increased because of it.

INNER ARCING OF SHUTTLE CARS

4. On August 23, 1989, Federal Coal Mine Inspector Donald E. Gibson inspected the subject mine because MSHA had received a section 103(g) complaint that "arcing" existed when shuttle cars touched the continuous miner.

5. When Inspector Gibson reached the section, the continuous miner was outby the power center where repairs were being performed. For that reason, he conducted his tests between two shuttle cars, number 20 and number 21. The shift was an idle shift and the cars were parked. He tested with a Hubble-Ensign amp meter, clamping a lead to each car, the cars being between 12 and 24 inches apart. He asked the operator of car No. 20 to set the parking brake and start the tram lever. This resulted in a reading of 1.5 amps on the meter. Using the same procedures on car No. 21, he found a reading of 1.2 amps. He verified these readings using a "lock-on" amp meter. The same results were found. Respondent's witnesses testified that the inspector did not use the Hubble-Ensign amp meter but only used the lock-on amp probe, which did not have an ohm resistor. I have no reason to disbelieve the testimony of Inspector Gibson, and therefore on this question, I accept it as factual.

6. The two shuttle cars involved here were the only cars normally used on the section. They operated on separate roadways, one tramming toward the miner to obtain a load of coal, the other hauling a load of coal from the miner to the feeder breaker and beltline. In the normal mining cycle, the two shuttle cars do not contact each other. On one occasion in 1987 or 1988 when a new mine was being started, the two shuttle cars were operated "piggy-back"--one car was loaded from the miner and then transferred the load to the other car. This occurred because the miner was a great distance from the feeder breaker.

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It has not been repeated. Although the shuttle cars do not contact each other, each car regularly contacts the continuous miner in the normal mining cycle.

7. No methane has ever been detected in the mine by a hand held methane detector. Bottle samples taken April 6, 1988 showed .04% methane. Samples taken February 22, 1989, showed .01 % methane. The former would result in 24,000 CFM methane in a 24 hour period, the latter in 1500 CFM methane in a 24 hour period.

8. On August 23, 1989, Inspector Gibson issued two citations alleging violations of 30 C.F.R. 75.524 because the current between the frames of the No. 20 and No. 21 Joy shuttle cars exceeded one ampere. (One citation was issued for each shuttle car.) The inspector also issued a withdrawal order under section 107(a) of the Act alleging that the conditions of the two shuttle cars constituted an imminent danger. The withdrawal order itself was not contested.

9. The withdrawal order was terminated on August 23, 1989, when the shuttle cars were deenergized and removed from the section. The citations were terminated on August 24, 1989, when "the inner arcing on [each] machine was repaired."

#### METHANE MONITOR

10. At about 4:30 a.m., on November 16, 1989, a piece of rib coal struck the methane monitor on the continuous mining machine and knocked out the power to the miner. The miner operator (also the section foreman on the graveyard shift) bypassed the power to eliminate the monitor in order to back the miner out to a safer place. It was then about 5:30 a.m., and the section foreman performed his preshift examination and called the results outside. The miner was not tagged or locked out.

11. The preshift examination book did not note that the methane monitor was inoperative or that miner was removed from service.

12. Inspector Gibson arrived at the mine shortly after 5:30 a.m., on November 16, 1989, conferred with Kenneth Defa, C.W.'s Superintendent, and went underground a little before 7:00 a.m. to perform an electrical spot inspection.

13. When the inspection party arrived on the section, the continuous miner was energized and miners were servicing and washing it. It was located about two crosscuts in by the feeder breaker. It had not been used to cut coal since it was moved back at about 5:30 a.m.

14. Inspector Gibson checked the methane monitor and found that it was not operating. He issued a citation for a violation

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of 30 C.F.R. 75.313. He cited the violation as significant and substantial. No methane was detected at the time. The Inspector believed that the condition created a hazard of an ignition or explosion should the miner strike a pocket of methane and fail to shut down.

15. After the citation was issued, Superintendent Defa asked Inspector Gibson for permission to continue to use the miner until the methane monitor could be replaced. Gibson told him he could not give such permission. Defa denied that he made such a request, but I accept Gibson's testimony that he did.

16. A new methane monitor was installed and the citation was terminated on November 17, 1989.

#### PERMISSIBILITY

17. The same continuous miner had a loose headlight and an opening in excess of .005 inch between the cover lid and the main circuit breaker compartment.

18. Inspector Gibson issued a citation on November 16, 1989, for a violation of 30 C.F.R. 75.503. He cited the violation as significant and substantial.

19. The hazard posed by this condition was the possibility of internal arcing within the control box which could escape to the outside and cause an ignition. The miner was not cutting coal, but was energized.

20. The conditions were corrected by securely fastening the headlight to the frame of the machine and closing the opening in the cover lid of the main circuit breaker compartment. The citation was terminated November 17, 1989.

#### ACCUMULATIONS ON BOBCAT

21. On November 17, 1989, there were accumulations of coal fines, pieces of coal and oil on the housing of a diesel bobcat being operated on the West bleeder working section of the subject mine. The oil and oil mixed with coal were on the top and both sides of the motor. Coal and coal fines were on the bottom of the motor.

22. Inspector Gibson issued a citation for the above accumulations alleging a violation of 30 C.F.R. 75.400. He designated the violation as significant and substantial because he believed they posed a fire hazard. He did not measure the accumulations.

23. The bobcat had been cleaned about 10 hours prior to the issuance of the citation. It was scheduled to be cleaned again

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on the following shift in accordance with the company cleanup program.

24. The bobcat was cleaned, the accumulations removed, and the citation terminated in about 15 minutes.

#### REGULATIONS

30 C.F.R. 75.524 provides as follows:

75.524 Electric face equipment; electric equipment used in return air outby the last open crosscut; maximum level of alternating or direct electric current between frames of equipment.

The maximum level of alternating or direct electric current that exists between the frames of any two units of electric face equipment that come in contact with each other in the working places of a coal mine, or between the frames of any two units of electric equipment that come in contact with each other in return air outby the last open crosscut, shall not exceed one ampere as determined from the voltage measured across a 0.1 ohm resistor connected between the frames of such equipment.

30 C.F.R. 75.313 provides as follows:

75.313 Methane monitor.

#### [Statutory Provisions]

The Secretary or his authorized representative shall require, as an additional device for detecting concentrations of methane, that a methane monitor, approved as reliable by the Secretary after March 30, 1970, be installed, when available, on any electric face cutting equipment, continuous miner, longwall face equipment, and loading machine, except that no monitor shall be required to be installed on any such equipment prior to the date on which such equipment is required to be permissible under 75.500, 75.501, and 75.504. When installed on any such equipment, such monitor shall be kept operative and properly maintained and frequently tested as prescribed by the Secretary. The sensing device of such monitor shall be installed as close to the working face as practicable. Such monitor shall be set to deenergize automatically such equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage determined by an authorized representative of the Secretary which shall

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not be more than 1.0 volume per centum of methane. An authorized representative of the Secretary shall require such monitor to deenergize automatically equipment on which it is installed when the concentration of methane reaches a maximum percentage determined by such representative which shall not be more than 2.0 volume per centum of methane.

30 C.F.R. 75.503 provides as follows:

75.503 Permissible electric face equipment; maintenance.

[Statutory Provisions]

The operator of each coal mine shall maintain in permissible condition all electric face equipment required by 75.500, 75.501, 75.504 to be permissible which is taken into or used in by the last open crosscut of any such mine.

30 C.F.R. 75.400 provides as follows:

75.400 Accumulation of combustible materials.

[Statutory Provisions]

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

#### ISSUES

1. Whether the evidence establishes that the level of electric current existing between the frames of two units of electric face equipment that come in contact with each other in the working places of the coal mine exceeded one ampere?
2. Whether the methane monitor on the continuous monitor was kept operative and properly maintained?
3. Whether the continuous miner was maintained in a permissible condition?
4. Whether coal dust and other combustible materials were permitted to accumulate on the diesel bobcat?
5. Whether, if violations are established, they were significant and substantial?

CONCLUSIONS OF LAW

C.W. is subject to the provisions of the Act in the operation of the Bear Canyon No. 1 Mine. I have jurisdiction over the parties and subject matter of this proceeding. C.W. is a medium sized operator and has an average history of prior violations. All the violations involved in this proceeding were abated promptly in good faith.

I. INNER ARCING OF SHUTTLE CARS

30 C.F.R. 75.524 provides that the maximum level of electric current existing between the frames of any two units of electric face equipment that come in contact with each other in the working places or in return air outby the last open crosscut shall not exceed one ampere. The inspector tested two shuttle cars and found the current to exceed one ampere in each car. The evidence, however, does not establish that these shuttle cars come in contact with each other, either in the working places, or in return air outby the last open crosscut. Each shuttle car regularly comes in contact with the continuous miner, and the inspector speculated that arcing would occur between each car and the miner, but he did not test them. I conclude that the Secretary has not carried her burden of proving the two violations charged in citations 3411949 and 3411950.

II. METHANE MONITOR

The methane monitor on the continuous monitor was admittedly inoperative. The miner had been pulled back from the face because the monitor had been damaged. The question is whether it was withdrawn from service. It was not deenergized when Inspector Gibson observed it. The methane monitor problem had not been noted in the preshift book (though the condition had been orally reported by the graveyard shift foreman). The miner was not tagged or locked out. Most significantly, C.W.'s superintendent asked the inspector for permission to continue to use the miner. Therefore, I conclude that the methane monitor on the continuous miner was not kept operative or properly maintained. I reject C.W.'s contention that the methane monitor violation is a permissibility violation, and must be included as part of the citation alleging other permissibility violations.

The failure to remove a continuous miner from service when its methane monitor is inoperative is a very serious violation. Such a violation is likely to result in serious injury. This is true even though methane has not been detected by a methane detector in this mine. As Inspector Gibson stated, methane is liberated in the cutting of coal, and even a small amount of methane can cause an ignition. It was properly cited as significant and substantial. Cf. Mathies Coal Company, 6 FMSHRC 1 (1984).

III. PERMISSIBILITY

C.W. does not seriously contest the alleged permissibility violations but argues that they were minimal. The headlight was loose; there was an opening in the main circuit breaker compartment of the miner. I conclude that a violation of the permissibility standard was established. The Secretary has failed to establish that the violation was significant and substantial. There is no evidence that it would be reasonably likely to result in injury.

IV. ACCUMULATIONS ON BOBCAT

C.W. argues that the accumulations on the bobcat constituted simply a film and that C.W. follows a regular cleanup program. Inspector Gibson testified that motor oil had leaked from the valve cover pan down on the sides of the motor. He testified that coal fines and loose coal were caked on the sides of the motor. I conclude that C.W. permitted coal dust, loose coal and other combustible material to accumulate on the bobcat. The fact that it was following a cleanup plan does not defeat a citation for accumulations of combustible materials. Utah Power & Light Co., 12 FMSHRC 965 (1990). The bobcat motor was hot to the touch. The accumulations were reasonably likely to ignite. The bobcat was parked behind the feeder breaker. Should a fire break out, it would cause smoke or flame to go inby toward the face. The violation was significant and substantial.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED:

1. Citation 3411629 is VACATED.
2. Citations 3411949 and 3411950 are VACATED.
3. Citations 3077726 and 3412009 are AFFIRMED.
4. Citations 3412281 and 3412288 are AFFIRMED including the designation of the violations as significant and substantial.
5. Citation 3412282 is modified to eliminate the designation of significant and substantial and, as modified, is AFFIRMED.
6. C.W. Mining shall within 30 days of the date of this decision pay the following civil penalties for the violations found herein:

CITATION

30 C.F.R.

PENALTY

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3077726	48.9(a)	\$ 250.00
3412009	75.400	178.00
3412281	75.313	400.00
3412282	75.503	50.00
3412288	75.400	300.00

\$1178.00

James A. Broderick  
Administrative Law Judge