

CCASE:  
SOL (MSHA) v. CONSOLIDATION COAL  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

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

v.

CONSOLIDATION COAL COMPANY  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 91-27  
A. C. No. 46-01867-03864

Blacksville No. 1 Mine

DECISION

Appearances: Page H. Jackson, Esq., Office of the Solicitor,  
U. S. Department of Labor, Arlington, Virginia,  
for the Secretary of Labor (Secretary);  
Walter J. Scheller III, Esq., Pittsburgh,  
Pennsylvania, for Consolidation Coal Company  
(Consol).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for three alleged violations of mandatory safety standards alleged in three citations issued on August 31, 1990. Pursuant to notice, the case was called for hearing in Morgantown, West Virginia, on April 17-18, 1991. At the hearing, the Secretary proposed a settlement with respect to one of the alleged violations. After the close of the hearing she submitted a settlement motion with respect to a second alleged violation. With respect to the other one, Federal Coal Mine Inspector Joseph Migaiolo testified on behalf of the Secretary. John Morrison and Craig G. Yanak testified on behalf of Consol. Both parties have filed Posthearing Briefs. I have considered the entire record and the contentions of the parties in making the following decision.

SETTLEMENT MOTION CITATION NO. 3314114

This citation alleged a violation of 30 C.F.R. 75.400 because an accumulation of loose coal and float coal dust had been deposited on the P-8 longwall roof support shield and other parts of the longwall. The violation was alleged to be significant and substantial, and caused by Consol's moderate negligence.

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It was assessed at \$500. The motion proposes a reduction to \$350 on the ground that the negligence should be reduced to low negligence. I have considered the motion in the light of the criteria in Section 110(i) of the Act, and conclude that it should be approved.

SETTLEMENT MOTION CITATION NO. 3314113

On August 5, 1991, the Secretary filed a motion for approval of a settlement whereby Consol agreed to pay the amount originally assessed, \$276. The citation alleged a violation of 30 C.F.R. 75.305 because Consol failed to conduct an adequate weekly examination in that it failed to report a hazardous roof condition in the intake escapeway. I have considered the motion in the light of the criteria in Section 110(i) of the Act, and conclude that it should be approved.

FINDINGS OF FACT

Consol was at all pertinent times the owner and operator of an underground coal mine in Monongalia County, West Virginia, known as the Blacksville No. 1 Mine. Consol is a large operator. The imposition of penalties in this case will not affect its ability to continue in business. The subject mine has an average history of prior violations for a mine of its size, and any penalties imposed herein will not be increased or decreased because of that history. The violations involved in this case were abated timely and in good faith.

CITATION NO. 3314111

On August 31, 1990, there was an accumulation of hydraulic pump fluid covered with fine coal and coal dust on a hydraulic pump sled inby the mantrip station along an active travelway in the subject mine. The material measured from 1/8 to 1/4 inch in depth. The extent of the accumulation was such that it would have taken several working shifts to develop. The pump has a 440 volt AC motor. A 104(d)(2) Order was issued for a violation of 30 C.F.R. 75.400. That Order is not before me in this proceeding, which only involves an alleged violation of 30 C.F.R. 75.303(a). The hydraulic fluid consists of a white emulsion combination of oil and water. In the material on the sled, the water had partially evaporated leaving a yellow sticky residue which the inspector believed to be combustible. No sample of the material was taken to test its combustibility. Craig Yanak, Consol's Supervisor of dust, noise control, and hazardous chemicals, testified that the hydraulic fluid was 95 percent water and 5 percent concentrate. The concentrate is itself only 5 percent petroleum. Based on Yanak's discussion with the manufacturer, he believed the product would not be combustible under normal mining conditions. Consol submitted a letter from the manufacturer

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stating that once the product is mixed with water, the water cannot evaporate sufficiently to make the residue combustible. (Operator's Ex 1). The August 31, 1990, preshift examiner's report did not refer to the accumulation on the pump sled. Inspector Migaiolo issued the contested citation charging a violation of 30 C.F.R. 75.303(a) because he believed that the failure to note the condition showed that an adequate preshift examination was not performed.

I find that the accumulation on the pump sled was combustible regardless of the combustibility of the hydraulic fluid itself, since it contained coal, coal dust, and float coal dust. The accumulation was clearly visible. Therefore, it should have been seen by the mine examiner and reported in the examiner's book.

The pump sled motor constituted an ignition source. If a fire broke out it would travel directly to the longwall face where miners were working. The citation was terminated September 6, 1990. The inspector determined that adequate preshift examinations were being conducted as of that date.

#### REGULATIONS

30 C.F.R. 75.303(a) provides as follows:

(a) within 3 hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section for accumulations of methane with means approved by the Secretary for detecting methane, and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test roof, face, and rib conditions in such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards; test by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume and velocity; and examine for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which

coal is carried shall be examined after each coal-producing shift has begun. Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "danger" sign conspicuously at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination, such mine examiner shall report the results of his examination to a person, designated by the operator to receive such reports at a designated station on the surface of the mine, before other persons enter the underground areas of such mine to work in such shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil on a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

#### ISSUES

1. Whether the evidence establishes that the cited violation occurred?
2. If so, was the violation significant and substantial?
3. If so, what is the appropriate penalty?

#### CONCLUSIONS OF LAW

Consol is subject to the provisions of the Mine Act in the operation of the Blacksville No. 1 Mine. I have jurisdiction over the parties and subject matter of this proceeding.

CITATION NO. 3314111

I have found as a fact that the accumulation on the hydraulic pump sled was combustible. It was evident and created a hazard. Therefore, the mine examiner should have reported and recorded it in the preshift examination book. His failure to do so constituted a violation of 30 C.F.R. 75.303(a). Because

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there was an ignition source at the area of combustible accumulation, the condition created a hazard and failure to note it would permit it to go uncorrected. A fire could result and cause injury to miners. The violation was reasonably likely to result in such injuries and was therefore significant and substantial. See Mathies Coal Co., 6 FMSHRC 1 (1984). It was a serious violation, and resulted from Consol's negligence since the condition was obvious to visual observation. Based on the criteria in Section 110(i) of the Act, I conclude that \$400 is an appropriate penalty for the violation.

ORDER

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

1. Citation No. 3314111, including its designation of the violation as significant and substantial, is AFFIRMED.

2. Citation No. 3314113, including its designation of the violation as significant and substantial, is AFFIRMED.

3. Consol shall, within 30 days of the date of this Decision, pay the following civil penalties:

CITATION	AMOUNT
3314111	\$400
3314113	\$276
3314114	\$350
TOTAL	\$1026

James A. Broderick  
Administrative Law Judge