

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-434-9900 / FAX: 202-434-9954

December 22, 2020

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2019-0389
Petitioner	:	A.C. No. 11-00122-498843
	:	
v.	:	
	:	
BLUFF CITY MINERALS, LLC,	:	Mine: Bluff City Minerals
Respondent	:	

DECISION

Appearances: Emelda Medrano, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois, for Petitioner;

Dennis Sullens, Fred Weber, Inc., Maryland Heights, Missouri, for Respondent.

Before: Judge Bulluck

This case is before me upon a Petition for Assessment of Civil Penalty filed by the Secretary of Labor (“Secretary”) on behalf of the Mine Safety and Health Administration (“MSHA”) against Bluff City Minerals, LLC, (“Bluff City”), pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815(d). The Secretary seeks a civil penalty in the amount of \$121.00 for an alleged violation of his mandatory safety standard regarding protection of persons at switchgear.

A remote hearing was conducted over Zoom. The Secretary presented testimony of two witnesses, and had seven exhibits entered into evidence. Bluff City appeared without legal counsel, presented no testimonial or documentary evidence, and elected to prove its case solely by cross-examination of the Secretary’s witnesses. The following issues are before me: (1) whether Bluff City violated 30 C.F.R. § 57.12020; and, if so, (2) the appropriate penalty. The parties’ Post-hearing Briefs are of record.

After consideration of the evidence, and observation of the witnesses and assessment of their credibility, I **AFFIRM** the citation, as issued, and assess a penalty against Respondent for the reasons set forth below.

I. Joint Stipulations

The parties have stipulated as follows:

1. The Administrative Law Judge has jurisdiction in this matter.
2. Bluff City Minerals, LLC, (“Bluff City”) is the operator of the Bluff City Minerals Mine, Mine ID: 11-00122, located in Alton, Illinois.
3. Bluff City is a mine, as defined in Section 3(a) to the Mine Act, 30 U.S.C. § 802(h).
4. Bluff City engaged in mine operations in the United States, and its mining operations affected interstate commerce.
5. The citation at issue in this proceeding is listed in Exhibit A of the Petition, and was issued on the date set forth therein.
6. Pursuant to Section 110(i) of the Mine Act, 30 U.S.C. § 20(i), the Secretary has assessed a civil penalty in the amount of \$121.00 against Respondent.
7. Citation No. 9387334 was properly served by a duly authorized representative of the Secretary upon an agent of Bluff City, and may be admitted into evidence for the purpose of establishing its issuance.
8. On July 17, 2019, at the time of the inspection, the insulated mat at the start-up switch and disconnect of the S-11 water pump had water spraying on it.
9. The S-11 water pump is an automatic pump, and the float turns it on and off.
10. From July 10, 2019, through July 17, 2019, the S-11 pump was checked “okay” on the workplace examination book.
11. From July 10, 2019, through July 17, 2019, the wet insulated mat was not identified on any workplace examination book.
12. From July 10, 2019, through July 17, 2019, the pipe leaking water onto the wet insulated mat was not identified on any workplace examination book.
13. The payment of the assessed penalty would not affect the mine’s ability to continue in business.

14. The gravity of the violation was “unlikely” to cause an injury reasonably expected to be “fatal.”

15. The negligence was “low.”

Tr. 8-10, 123.

II. Factual Background

Bluff City owns and operates the Bluff City Minerals Mine (“mine”), an underground limestone mine in Alton, Madison County, Illinois. Jt. Stip. 2. On the morning of July 17, 2019, MSHA inspector Phillip Walker arrived at the mine to conduct an E01 inspection. Tr. 21-22. The inspection party included safety supervisor Austin Subke, underground superintendent Terry Roberts, and miners’ representative Trevor Kroeschel. Tr. 35. During the beginning of the inspection, while the inspection party was traveling underground, Walker spotted a water leak, and the inspection party exited the truck to check on the condition. Tr. 27-29, 35. Walker identified a waterline valve as the source, and observed water spraying on the insulated mat situated below the start-up switch and disconnect for the S-11 water pump. Jt. Stip. 8; Tr. 27-33, 36-37, 40-41. After discussing the instillation’s grounding with Kroeschel and inspecting it, Walker informed the inspection party that he would be issuing a citation. Tr. 41-42, 48-51. To eliminate the alleged hazard, the S-11 pump was turned off, the wet mat was removed to dry, and parts were ordered to repair the valve. Tr. 48-49. Just shy of two weeks later, the citation was terminated. Ex. P-2.

III. Findings of Fact and Conclusions of Law

Inspector Walker issued 104(a) Citation No. 9387334 on July 17, 2019, alleging a violation of section 57.12020 that was “unlikely” to cause an injury that could reasonably be expected to be “fatal,” and was caused by Bluff City’s “low” negligence.¹ Ex. P-2. The “Condition or Practice” is described as follows:

The insulated platform at the start-up switch and disconnect for the water pump S-11 had water spraying on the platform creating a shock hazard. This pump is in [sic] automatic, and a float turns it on and off. Miners rarely turn the auto switch on unless [sic] a problem with the pump. The startup box for the pump was grounded. A miner is at risk of a fatal electrical shock with water spraying on the insulated platform.

¹ 30 C.F.R. § 57.12020 provides that “[d]ry wooden platforms, insulating mats, or other electrically-nonconductive material shall be kept in place at all switchboards and power-control switches where shock hazards exist. However, metal plates on which a person normally would stand and which are kept at the same potential as the grounded, metal, non-current-carrying parts of the power switches to be operated may be used.”

Ex. P-2. The citation was terminated on July 31, 2019, after the replacement parts were installed on the valve.

A. Fact of Violation

In order to establish a violation of the Mine Act, the Secretary must prove that the violation occurred “by a preponderance of the credible evidence.” *Keystone Coal Mining Corp.*, 17 FMSHRC 1819, 1838 (Nov. 1995) (citing *Garden Creek Pocahontas Co.*, 11 FMSHRC 2148, 2152 (Nov. 1989)).

The Secretary maintains that Bluff City violated section 57.12020 by failing to maintain a dry insulated mat at the S-11 water pump switch. Sec’y Br. at 8-10 (citing *Markey Mines, Inc.*, 6 FMSHRC 2659, 2673 (Nov. 1984) (ALJ) (finding a violation where there was no insulating material for protection at a switchbox); *Black River Sand & Gravel, Inc.*, 3 FMSHRC 2340, 2343 (Oct. 1981) (ALJ) (finding a violation where the platform and insulating mat for a series of electrical switches were buried under wet sand and mud); *Union Rock & Materials Corp.*, 2 FMSHRC 3289, 3291 (Nov. 1980) (ALJ) (finding a violation where a rubber mat for an electrical switch and the surrounding area were wet, explaining that in the event of a short, the wet mat and surrounding water would serve as conductors).² Conversely, Bluff City argues that it did not violate the standard, contending that the term “dry” only applies to “wooden platforms.” Resp’t Br. at 1-2.

1. Summary of Testimony

MSHA Inspector Phillip Walker testified that he arrived at the mine on July 17, 2019, to conduct an E01 inspection, and that safety supervisor Austin Subke, underground superintendent Terry Roberts, and miners’ representative Trevor Kroeschel accompanied him during inspection. Tr. 21-22, 35. Walker stated that from the vantage point of the truck transporting the inspection party, he observed a water spray and that, as they approached the condition on foot, he told Roberts, “I believe that’s going to be a violation.” Tr. 27-32, 35-37. He testified that he identified a leaky valve in the waterline used for refilling water trucks, spraying water on the insulating mat for the S-11 water pump switch and disconnect, that the mat and the ground around it were covered with water, and that the mat was on top of a polyurethane pallet. Tr. 27-32, 36-37, 40-41, 53, 60-62; Ex. P-4. He explained that water spraying around electrical equipment is dangerous because it can cause a short, a fire, or a fatal electrical shock, if contacted. Tr. 36-37. Walker testified that Kroeschel told him that the power switch was double grounded, that he inspected the installation and determined that it utilized a ground wire in the power cable and peg grounding, and that he explained to him that there was only one sufficient path to ground because MSHA does not recognize peg grounding as an independent form of grounding. Tr. 41-50. He stated that, at this point, the pump was turned off without his prompting and that, at his instruction, the mat was moved so that it could dry, allowing him to

² The Secretary notes that there are no cases addressing section 57.12020 specifically, and cites to ALJ cases concerning the predecessor regulations for underground and surface electrical installations, sections 57.12-20 and 56.12-20, which are identical to sections 57.12020 and 56.12020. See Sec’y Br. at 9 n.5.

see water on the sides and underneath it, and on the pallet. Tr. 44-45, 48-53, 56, 60-62. He explained that these actions eliminated the hazard, but that it was necessary to order parts for the valve in order to terminate the citation. Tr. 48-49; Ex. P-2. Walker stated that based on his observations, he determined that exposure to the hazard would have been minimal because the power switch was used only twice a day and a float allowed the pump to turn on and off automatically, but that contact with 480 volts would likely result in a fatality, and Bluff City exhibited low negligence because the condition had not been reported at the time of inspection. Tr. 38-40. He opined that the standard is crucial for miners' safety because the mat provides insulation from electrical shock in the event of a short occurring during operation of the pump switch, and that a wet mat defeats the protective purpose of having an insulator since water is highly conductive. Tr. 47-48. Walker also explained that if an electrical instillation is double grounded, it is not required to have a dry insulating mat. Tr. 64, 66, 68-69. In response to Bluff City's cross-examination about whether rain would cause a violation at surface instillations, he opined that without an analysis of a particular situation, a determination cannot be made, and explained that surface mines can have main control areas where power to electrical instillations can be shut down. Tr. 53-56.

MSHA electrical specialist Bub Whitfield testified that he reviews electrical citations, answers questions from inspectors and supervisors, and conducts inspections of electrical systems, and that he was called to review the insulated mat and grounding issues in this case. Tr. 71-72, 76-77. Regarding the requirements of the standard, he stated that based on his training and experience, it is clear that "dry" applies to all of the listed insulating materials, explaining that if an insulating mat is connected to the earth by any amount of conductive material, such as water, it is no longer insulating. Tr. 90, 94, 114-18. He clarified that while distilled water is not a good conductor, mine water is particularly conductive. Tr. 104-05. He explained that MSHA's Program Policy Manual for the cited standard distinguishes between high-, more dangerous, voltage and low-voltage instillations; low-voltage instillations, such as Bluff City's 480-volt pump switch, require either a form of insulation and a path to ground or, alternatively, two or more good paths to ground. Tr. 79-83, 97, 101, 114, 116; Ex. P-5. He testified that Bluff City utilized a ground conductor in the power cable and a grounding electrode bonded to the framework of the instillation, called "peg grounding," and that, together, they made-up one good grounding system. Tr. 82-85, 91; Ex. P-6. In describing peg grounding, he referenced an MSHA technical paper that explains its dangers and unreliability, and he went on to explain that peg grounding is not considered a sufficient independent path to ground by MSHA because it does not return directly to the power source. Tr. 80-84, 91; Ex. P-6. He stated that the only scenario in which an insulating mat could be wet is if the mine were to employ a double grounding system, rendering the mat redundant. Tr. 112-13. He explained that while sections 57.12020 and 56.12020 contain identical language, it can be more difficult to have two effective paths to ground in underground instillations than in surface instillations that are more likely to be permanent, and that underground instillations commonly employ an insulating mat and a single ground. Tr. 80-84, 88, 93-94, 100-03. In response to a line of hypothetical questions regarding rain at surface instillations, Whitfield described some of the ways in which surface operations keep mats dry, and stated that electricians typically do not use electrical equipment in the rain, and that surface operations typically can turn off power in electrical control rooms upstream from electrical instillations. Tr. 93-95, 100-02, 108-09.

2. Analysis

The Secretary contends that the plain language of section 57.12020 requires Bluff City to maintain a dry insulating mat at the S-11 pump switch. Sec’y Br. at 13-14.³ Bluff City argues that the regulation only requires wooden platforms to be kept dry, asserting that insulated mats cannot absorb water and, therefore, do not create a risk of shock when wet. Resp’t Br. at 1-2.

When the language of a provision is plain, the plain language is the meaning of the provision, and the sole function of the courts is to enforce the language, as written. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). Section 57.12020 provides, in pertinent part, that “[d]ry wooden platforms, *insulating mats*, or other electrically-nonconductive material shall be kept in place at all switchboards and power-control switches where *shock hazards exist*.” 30 C.F.R. § 57.12020 (emphasis added). Considering that mine water is highly conductive and that the objective of the standard is prevention of electrical shock, the term “dry” clearly modifies all of the alternatives that follow. Accordingly, in situations where this standard is applicable, insulated mats and other electrically-nonconductive material, in addition to wooden platforms, must be kept dry. Moreover, the plain language reading of section 57.12020, requiring all nonconductive materials to be kept dry, is reasonably based on an understanding of electricity’s properties, and is consistent with the protective goals of the Mine Act; the reading that Bluff City urges not only ignores the conductivity of mine water, but clearly subverts the Mine Act’s underlying objectives. As the Commission has noted, “safety standards ‘must be interpreted so as to harmonize with and further . . . the objective[s] of’ the Mine Act.” *Nally & Hamilton Enters.*, 38 FMSHRC 1644, 1649 (July 2016) (quoting *Emery Mining Corp.*, 744 F.2d 1411, 1414 (10th Cir. 1984)). Here, the clear wording of the standard protects miners from electrical shock at switchboards and power-control switches, and the evidence establishes that the wet insulated mat at the S-11 water pump switch created the exact hazard that the standard was intended to prevent.

While Bluff City correctly identifies some factual differences distinguishing *Black River Sand* and *Union Rock* from the matter at hand, violations were found in both cases where insulating mats were wet, cutting against Bluff City’s theory of non-culpability. See *Black River Sand*, 3 FMSHRC at 2343; *Union Rock*, 2 FMSHRC at 3291.

MSHA’s Program Policy Manual provides guidance for section 57.12020, explaining that “two or more good paths to ground for fault current would eliminate the need for insulating mats at power switches rated 650 volts or less.” Ex. P-5. Bluff City does not affirmatively pursue any argument that peg grounding is a sufficient second path to ground and that the mat was redundant, but simply notes that if an installation is double grounded, no mat is needed. See Resp’t Br. at 2-3. Indeed, no evidence was presented to rebut the clearly established evidence that peg grounding is not recognized as a stand-alone form of grounding, and that well-known

³ Despite contending that the standard has a clear meaning, the Secretary raises a deference argument, which is not addressed herein. See Sec’y Br. at 11-15; see also *Kisor v. Wilkie*, 139 S.Ct. 2400, 2415 (2019) (“[A] court should not afford *Auer* deference unless the regulation is genuinely ambiguous. If uncertainty does not exist, there is no plausible reason for deference.” (citations omitted)).

dangers are associated with it.⁴ Moreover, Bluff City's utilization of the insulated mat makes reasonable the conclusion that the operator recognized that it had only one effective grounding system in place. Accordingly, the 480-volt water pump switch was required to have either a dry wooden platform, a dry insulating mat, or some other dry electrically-nonconductive material to protect miners from shock hazards.

Bluff City's contentions that examining the identical surface regulation is instructive, and that compliance on the surface would be impossible if it were raining, are unavailing. See Resp't Br. at 2, 4. While the language of section 56.12020 is identical to section 57.12020, surface and underground electrical installations operate in dissimilar environments, and there are different considerations in achieving compliance. Unrebutted testimony establishes that finding two paths to ground generally proves more difficult underground, that surface installations are more likely to be permanent, and that electricians working underground have concerns that are peculiar to underground methods of mining.

At this juncture, it is important to note that Bluff City's cross-examination of the Secretary's witnesses was heavily weighted by its opinions about compliance and, as such, elicited very little, if any, support for its position. The facts in this case are uncontested: that the inspection party came upon water actively spraying on the insulating mat for the 480-volt pump switch in the underground installation, that water covered the surface of the mat and its sides, and that the mat's underside, the pallet, and the area around the installation were wet also. Additionally, Bluff City only employed one recognized grounding system at the pump switch. Consequently, I find that a shock hazard existed at the S-11 water pump switch and disconnect, and that Bluff City violated section 57.12020.

B. Gravity and Negligence

The evidence establishes that the S-11 water pump switch typically was used twice a day, that the pump was on a float enabling it to turn on and off automatically, and that the water leak had been unreported prior to inspection. While exposure to this hazard was unlikely, contacting 480 volts without adequate protection would be reasonably expected to result in a fatality. Given these considerations, the parties have stipulated that the violation was unlikely to cause a fatal injury, and that Bluff City's negligence was low, stipulations that I accept as appropriate to the facts in this case. Jt. Stips. 14, 15.

IV. Penalty

While the Secretary has proposed a civil penalty of \$121.00, the judge must independently determine the appropriate assessment by proper consideration of the six penalty criteria set forth in section 110(i) of the Mine Act: "(1) the operator's history of previous violations; (2) the appropriateness of the penalty to the size of the business of the operator; (3) whether the operator was negligent; (4) the effect on the operator's ability to continue in business; (5) the gravity of the violation; and (6) whether good faith was demonstrated in

⁴ MSHA's technical guidance states that, "[w]hen a system is being supplied power from a grounded power system and "peg grounding" is employed, *a single ground fault* is all that is necessary to initiate a *potentially fatal situation*." Ex. P-6 (emphasis added).

attempting to achieve prompt abatement of the violation.” 30 U.S.C. § 820(i); *see Sellersburg Co.*, 5 FMSHRC 287, 291-92 (Mar. 1983), *aff’d* 736 F.2d 1147 (7th Cir. 1984).

Applying the *Sellersburg* penalty criteria, and based on a review of MSHA’s online records, I find that Bluff City is a medium-sized operator, with an overall history of violations that is a mitigating factor in assessing the appropriate penalty.⁵ The record indicates that Bluff City demonstrated good faith in achieving rapid compliance after notice of the violation, and the parties stipulated that imposition of the proposed penalty will not adversely affect Bluff City’s ability to remain in business. Jt. Stip. 13.

The remaining criteria involve consideration of the gravity of the violation and Bluff City’s negligence in its commission. While the likelihood of contact with the water pump switch at the time of an electrical fault in the system is low, because it could result in electrocution, this is a serious violation. The hazardous condition had not been reported during workplace examinations and, because there is no evidence as to its duration, Bluff City’s negligence was low. Therefore, considering my findings as to the six penalty criteria, I find that a penalty of \$150.00 is appropriate.

ORDER

WHEREFORE, it is **ORDERED** that Citation No. 9387334 is **AFFIRMED**, and that Bluff City Minerals, LLC, **PAY** a civil penalty of \$150.00 within thirty days of this Decision.⁶ **ACCORDINGLY**, this case is **DISMISSED**.



Jacqueline R. Bulluck
Administrative Law Judge

Distribution:

Emelda Medrano, Esq., U.S. Department of Labor, Office of the Solicitor, 230 S. Dearborn Street, Room 844, Chicago, IL 60604

Dennis Sullens, Fred Weber, Inc., 2320 Creve Coeur Mill Road, Maryland Heights, MO 63043

⁵ In the fifteen months preceding inspection, the operator had never been cited for a violation of section 57.12020. Ex. P-1.

⁶ Payment should be made electronically at Pay.Gov, a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508>. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration, P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers.