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SOL (MSHA) V. OZARK MAHONING CO.
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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.

OZARK MAHONING COMPANY,
RESPONDENT

Civil Penalty Proceedings

Docket No. VINC 79-138-PM
A.O. No. 11-01603-05002

MM #6 Mine

Docket No. VINC 79-173-PM
A.O. No. 11-01599-05001

Barnett Mine

DECISION

Appearances: Miguel J. Carmona, Esq., and William Posternack,
Esq., Office of the Solicitor, U.S. Department of Labor,
Chicago, Illinois, for Petitioner
M. L. Hahn and Victor Evans, Ozark Mahoning Company,
Rosiclare, Illinois, for Respondent

Before: Judge Stewart

FACTUAL AND PROCEDURAL BACKGROUND

The above-captioned cases are civil penalty proceedings brought pursuant to section 110 of the Federal Mine Safety and Health Act of 1977 (hereinafter, the Act), 30 U.S.C. 820(a) (1978). The hearing in these matters was held on August 21, 1979, in Evansville, Indiana. Petitioner called two witnesses and introduced five exhibits. Respondent introduced nine exhibits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties offered the following stipulations:

The size of the operating company was 454,636 man-hours per year.

The size of the MM #6 Mine was 44,000 man-hours per year.

The size of the Barnett Mine was 36,373 man-hours per year.

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Both mines are considered small.

Respondent has a low number of past violations at both the MM #6 and the Barnett Mines.

There is no indication on the record that the ability of the Respondent to remain in business would be adversely affected by any civil penalty ordered herein.

Docket No. VINC 79-138-PM

A single violation was alleged under this docket number. Citation No. 366255 was issued at the operator's MM #6 Mine by inspector Jack Lester on July 11, 1978. The inspector cited a violation of 30 CFR 57.9-71 (Footnote 1) and described the condition or practice at issue as follows: "Traffic rules including speed, signals and warning signs were not standardized and posted at the mine." The operator demonstrated a normal degree of good faith by correcting the condition within the time set by the inspector for abatement.

Section 57.9-71 requires that traffic rules be posted. Petitioner established that the operator had not posted a traffic sign at a point where vehicles exited mine property onto a country road. The failure to post either a yield or stop sign was in violation of section 57.9-71.

The operator was negligent in its failure to post a traffic sign. The absence of such a sign was visually obvious and should have been known to Respondent.

It was probable that an accident would occur because of this violation. The inspector testified that the visibility of drivers exiting the mine and that of drivers on the country road was partially restricted by a pile of rock. As the inspector turned onto mine property, he met a coal haulage truck and a hazardous condition developed as it entered onto the country road. At least one haulage truck used the road each hour in exiting the mine property.

Docket No. VINC 79-173-PM

The four violations included under this docket number were alleged by inspector Jack Lester to have occurred at Respondent's Barnett Mine. In each instance, the inspector issued a section 104(a) citation.

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Citation No. 00366218 was issued on April 20, 1978. The inspector cited a violation of 30 CFR 57.12-82 and described the pertinent condition or practice as follows: "Electrical power lines were noted in contact with water lines at the pump station on 800 level of the mine." The operator demonstrated a normal degree of good faith by correcting the condition within the time set by the inspector for abatement.

Section 57.12-82 requires that power lines shall be well separated or insulated from waterlines. The inspector observed an energized 480-volt power cable crossing over, and in contact with, a 4-inch aluminum water pipe. The outer jacket of the cable was comprised of neoprene and rubber insulation. This cable insulation did not fulfill the requirement that the power line be well separated or insulated from the waterline. The cable was in contact with the waterline and this condition was in violation of section 57.12-82. Any physical damage done to the insulation of the power cable could have caused energization of the waterline. Such physical damage could have been caused by a rock fall, the vibration of the pipelines, or a blow-out of the cable itself.

The operator was not negligent in its failure to comply with section 57.12-82. The cable was in good condition. The inspector did not observe splices in it or breaks in the insulation and the line was equipped with a ground fault indicator system. The operator may have reasonably believed that the cable was sufficiently insulated to meet the requirements of the mandatory standard. The inspector concluded that the operator was negligent because this type of violation had occurred at the mine on prior occasions. The evidence of record, however, did not establish that the operator knew or should have known of this particular condition.

It was probable that an accident would occur because of this condition. Any damage done to the cable could have energized the entire length of the waterline. If a person were to contact the energized pipeline, that person might suffer electrocution, severe burning, or shock.

Citation No. 00366228 was issued on May 19, 1978. The inspector cited a violation of 30 CFR 57.12-82 and described the relevant condition or practice as follows: "Powerlines were in contact with air and water lines by 8-S-85 chute and 9-S-369 raise." The operator demonstrated a normal degree of good faith by correcting the condition within the time specified for abatement.

This condition was in violation of section 57.12-82 as alleged. It was noted above that this standard requires powerlines to be well separated or insulated from waterlines and airlines. In this instance, an energized 110-volt powerline had been suspended from aluminum air and waterlines with uninsulated tie wire. The powerline was 12- or 14-gauge wire and was protected only by factory

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insulation. Because uninsulated tie wire had been used to suspend the powerline, it was not sufficiently separated or insulated from the lines to which it was attached.

It was not established on the record that negligence existed on the part of the operator. The cable was in good condition. There were no splices or breaks in the insulation. The operator may have believed that the powerline was adequately insulated. The inspector had concluded that Respondent was negligent because violations of this sort had occurred at this mine on prior occasions. The evidence of record, however, did not establish that the operator knew or should have known of this particular condition.

It was probable that this condition would result in an accident. Falling rock or a blow-out of the powerline could have caused energization of the air and waterlines. The cable was located in an active working area. The possibility also existed that the powerline might be damaged by heavy equipment or by rock thrown during blasting. Moreover, the section on which the cable was located was wet. If an accident were to occur, the injury expected to result would be electrocution, serious burns, or shock.

Citation No. 00366229 was issued on May 19, 1978. The inspector cited a violation of 57.11-51(a) and described the relevant condition or practice as follows: "A safe means of access was not provided in the secondary escape route between 900 level and 800 level because of loose rock in the ladders and on the landings." The operator demonstrated a normal degree of good faith by correcting the condition within the time set by the inspector for abatement.

The condition was in violation of section 57.11-51(a) as alleged. This mandatory standard requires that escape routes shall be inspected at regular intervals and maintained in a safe, travelable condition. The ladder in question was situated in the secondary escapeway. The inspector found that rock had accumulated on some of the rungs of the escape ladder so as to make a safe handhold or foothold difficult to obtain. The accumulations of rock on the landings also presented a slipping or tripping hazard. Although he was unsure whether the rock had fallen from above or was forced through boards on the sides of the escapeway, the inspector noted that no provision had been made to prevent rock from falling from above.

The operator was negligent in that it should have known of the condition and taken steps to abate it. The escapeway was not being inspected at regular intervals by supervisory personnel. If such inspections had taken place, the condition would have been observed.

The inspector testified that the occurrence of the event against which section 57.11-51(a) is directed was probable. At the time the violation was noted by the inspector, four men were working on the

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900 level. Because the mine had a history of release of hydrogen sulfide gas, the inspector thought that there might be a need to evacuate the miners through the secondary escapeway. If miners were forced to use the secondary escapeway, it was probable that an accident would occur. A fall could reasonably be expected to result in injury ranging from bruises to fatalities.

Citation No. 00366230 was also issued on May 19, 1978. The inspector cited a violation of 30 CFR 57.6-92 and described the relevant condition or practice as follows: "Explosives becoming deteriorated were in the day box on the 900 level." The operator demonstrated a normal degree of good faith by destroying the explosives on the following day, within the time set by the inspector for abatement.

The condition was in violation of section 57.6-92 as alleged. The standard requires that damaged or deteriorated explosives shall be destroyed in a safe manner. The inspector observed approximately 12 sticks of explosives in a day box on a regularly-used haulageway. The sticks of explosives were becoming "very mushy" and beads of oil had formed on the outer surfaces. These explosives had become "damaged or deteriorated" within the meaning of the mandatory standard.

The operator was negligent in that it should have known of the condition and taken steps to abate it. The condition of the explosives was visually obvious and they were situated in the day box. The day box is intended to hold only a single day's usage of explosives. It was the responsibility of supervisory personnel to inspect the explosives contained in this box and make certain that they were used on a rotating basis.

The explosives were a type with which the inspector was not familiar. Despite the deterioration, they posed little danger. The inspector believed that the substance which appeared to be leaking from the explosives was nitroglycerine. In fact, this substance was a nonexplosive, liquid salt solution. It was improbable that this condition would lead to accident or injury.

ASSESSMENTS

In consideration of the findings of fact and conclusions of law in this decision, based on the stipulations and evidence of record, the following assessments are appropriate under the criteria of section 110(i) of the Act:

Citation No.	Penalty
00366255	\$ 60
00366218	50
00366228	70
00366229	80
00366230	100

