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BECKLEY COAL V. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

BECKLEY COAL MINING COMPANY,  
CONTESTANT/APPLICANT

v.

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

Contest of Citation

Docket No. WEVA 81-436-R

Citation No. 876304

Application for Review

Docket No. WEVA 81-500-R

Order No. 887689

Beckley Mine

DECISION

Appearances: Harold S. Albertson, Jr., Esq., Hall, Albertson & Jones,  
Charleston, West Virginia, for Contestant-Applicant  
Catherine M. Oliver, Office of the Solicitor,  
U.S. Department of Labor, Philadelphia, Pennsylvania,  
for Respondent.

Before: Judge Melick

These consolidated cases are before me upon the notice of  
contest and application for review filed by the Beckley Coal  
Mining Company (Beckley) under sections 105(d) and 107(e),  
respectively, of the Federal Mine Safety and Health Act of 1977,  
30 U.S.C. | 801 et seq., the "Act," challenging the validity of  
citations and an order of withdrawal issued pursuant to sections  
104(a) and 107(a), respectively, of the Act. Hearings were held  
in Charleston, West Virginia, commencing August 18, 1981.

Docket No. WEVA 81-500-R

In this case, the Secretary moved at hearing to amend Order  
of Withdrawal No. 887689 to additionally incorporate therein a  
citation under section 104(a) of the Act. After hearings were  
held in the companion case (WEVA 81-436-R), Beckley moved to  
withdraw its application for review and contest of the combined  
withdrawal order and citation and provided adequate reasons  
therefore. That request was granted and accordingly the case  
captioned Docket No. WEVA 81-500-R was dismissed.

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Docket No. WEVA 81-436-R

The issue in this case is whether a violation of the mandatory standard at 30 C.F.R. | 75.329 existed as alleged in Citation No. 876304. The citation reads as follows:

The bleeder system for the 1 panel off Chestnut Mains Section (029) was not adequate to reduce the methane concentration to below 2 per centum. Methane in excess of 2 per centum was present in the No. 37 crosscut as detected with a permissible G-70 methane detector located at a point not less than 12 inches from the roof, face or ribs.

In relevant part, the cited standard provides as follows:

\* \* \* [a]ll areas from which pillars have been wholly or partially extracted and abandoned areas \* \* \* shall be ventilated by bleeder entries or by bleeder systems or equivalent means \* \* \*. When ventilation of such areas is required, such ventilation shall be maintained so as continuously to dilute, render harmless, and carry away methane and other explosive gases within such areas and to protect the active workings of the mine from the hazards of such methane and other explosive gases.

30 C.F.R. | 75.329.

There is no dispute that the subject panel was an area from which pillars had been wholly or partially extracted and had been abandoned as a gob area. In determining whether a violation has occurred, the specific issue then is whether ventilation of the cited area was being maintained so as "continuously to dilute, render harmless, and carry away methane and other explosive gases" in that area and "to protect the active workings of the mine from the hazards of such methane and other explosive gases."

The results of the methane readings taken in the bleeder system for the subject panel by MSHA ventilation specialist Kenneth Ayers on June 25, 1981, are not contested. In four bottle samples taken by Ayers in the No. 37 crosscut 52 feet in by the left rib, the methane content was 2.71, 2.67, 2.74, and 2.73 percent. Readings showing more than 3 percent methane were also obtained by Ayers with his handheld methane detector in the same locations. All other areas of the bleeder system tested by Ayers, including the No. 38 and No. 39 crosscuts, showed methane concentrations of less than 2 percent. Ayers conceded that none of the methane levels actually found in the bleeder system were dangerous per se and that a concentration of 5 percent would be necessary before an explosive condition existed. He also recognized that concentrations of methane higher than found in the crosscuts would be expected to exist in the gob area.

Ayers testified at one point that he was unable to detect any perceptible movement of air in the No. 37 crosscut where he found the highest concentrations of methane. He later testified, however, that the air movement was "minimal" and opined that "an anemometer would not have turned" in that crosscut. Regardless of his reasons, it is clear that he did not in fact conduct any smoke tube or anemometer tests to confirm air movement or the absence thereof. Within this framework, Inspector Ayers concluded that if the condition was left unabated, an accumulation of methane was "very possible" in the cited area and that it was not likely that the condition would have corrected itself.

Eugene Brown, Beckley's safety inspector, accompanied Ayers on his inspection. He disagreed with Ayers' evaluation of the air movement in the No. 37 crosscut. Brown testified that he actually felt the movement of air in the crosscut but was unable at that time to perform any smoke tube or anemometer tests because the equipment was not readily available. The next day, however, after removing a line curtain to reconstruct the scene in the No. 37 crosscut as it had existed when the citation was issued, Ronald Scaggs, Beckley's director of safety and training, and Brown conducted a smoke tube test. The released smoke moved out of the crosscut and into the bleeder. They also extended a probe with a methane detector into the same general area close to the gob in which Ayers had the day before found 3 percent methane. They obtained similar readings and some even in excess of 3 percent. Near the mouth of the No. 37 crosscut on the other hand, they found only low-level readings of around 1 percent methane. They concluded based on all the evidence that the relatively high methane concentrations in excess of 3 percent near the gob area were in fact being diluted into the bleeder system on June 26 in the same manner in which they were being diluted on June 25 when the citation was issued.

Whether there was a violation of the cited standard here depends on the adequacy of the ventilation system, not, as charged in the citation, solely upon the levels of methane found in any particular crosscut. The level of methane in the cited crosscut is only one of many factors to consider in determining whether a violation existed. The test set forth in the standard is whether the ventilation system is being "maintained so as continuously to dilute, render harmless, and carry away" the methane that both parties recognize is going to emanate from the gob area. It is therefore essential to know in this case whether such ventilation was being maintained in that part of Beckley's bleeder system here cited, i.e., the No. 37 crosscut. In this regard, the clear preponderance of the evidence does not support the alleged violation. Essentially the only evidence produced to suggest the inadequacy of the ventilation system here in effect was the one-time series of methane readings showing a non-explosive 2- to 3-percent concentration and the opinion of Inspector Ayers that there was "no perceptible" movement of air out of the cited crosscut. However, since Ayers himself later conceded that there was some air movement (though minimal) out of the crosscut, since he failed to support his earlier conclusion

of "no perceptible" air movement with a smoke tube test or anemometer reading, and since Safety Inspector Brown testified that there was indeed movement of air out of the crosscut

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at that time, I find it more credible that there was indeed movement of air (and methane) out of the No. 37 crosscut when the citation was issued. I also find credible the tests performed by Brown and Scaggs on the following day under conditions substantially similar to those when the citation was issued from which it may be inferred that methane from the gob area was indeed being diluted, rendered harmless, and carried away at that time as well as when the citation was issued. Accordingly, I find that there has been no violation of the standard as cited.

ORDER

Docket No. WEVA 81-436-R

Citation No. 876304 is VACATED and the contest is GRANTED.

Docket No. WEVA 81-500-R

The application for review and contest are DISMISSED.

Gary Melick  
Administrative Law Judge