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

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

v.

FMC CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 81-80-M

MSHA CASE NO. 48-00152-05030

MINE: FMC

FMC CORPORATION,
CONTESTANT

v.

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

CONTEST OF CITATION PROCEEDING

DOCKET NO. WEST 80-397-RM

Citation No. 337613

MINE: FMC

DECISION AND ORDER

Appearances:

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Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

Pursuant to provisions of section 105(d) of the Federal Mine Safety and Health Act of 1977 (hereinafter the "Act"), FMC Corporation (hereinafter "FMC") filed its Notice of Contest of a citation issued June 13, 1980 which, alleged a violation of 30 C.F.R. 57.6-107. The regulation reads "Holes shall not be drilled where there is danger of intersecting a charged or misfired hole." FMC alleges that the citation is invalid and void.

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Subsequent to the filing of the Notice of Contest, the Secretary filed a petition for assessment of a civil penalty for the violation alleged in the same citation. An order was entered consolidating the above cases for hearing. The parties agreed that I have jurisdiction over the parties and subject matter of these proceedings.

FINDINGS OF FACT

1. FMC is a large operator, and the imposition of a proposed civil penalty will not affect FMC's ability to continue in business.

2. FMC's history of previous violations is not extraordinary with respect to other mines of similar size.

3. FMC demonstrated good faith in abating the alleged violation after notification.

4. It is the procedure at FMC's underground Trona Mine that the standard pattern used for drilling and blasting is to commence work on the right side of a room and then move to the left. Thus, the driller might drill the right crosscut of a room, then left to the face, and then move to the left side of the room and drill the left crosscut.

5. After the driller completes his work in a room, the blaster (shot fire) follows and would prepare the right crosscut, the face, and then the left crosscut, in that order, for blasting.

6. The blaster inserts the primer in the drill holes and then the holes are tamped with explosive agent. The wiring of the holes is then completed in order to be ready for firing.

7. On June 10, 1980, Billy Smith, a blaster, was assigned to load and blast in rooms 4 and 5 after they were drilled on the same date. In room 4 only the face and left crosscut were to be drilled and blasted, but in room 5, the right crosscut, face and left crosscut were to be prepared for blasting.

8. It took Smith approximately 20 to 30 minutes to prepare a face or crosscut for blasting, and it took approximately 10 to 20 minutes for the driller to drill a face or crosscut.

9. After the driller completed drilling the face and left crosscut of room 4 he moved into room 5 and began drilling the right crosscut. On the opposite side of the right crosscut of room 5 was the left crosscut of room 4.

10. Immediately following the drillers withdrawal from room 4, Smith entered the room and loaded the drill holes at the face with primer, but instead of completing the operation by inserting the explosives, tamping or stemming the holes, and completing the wiring, he moved to the left crosscut of the same room and commenced loading it.

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11. The driller was still drilling holes in the right crosscut of room 5 when Smith began loading the explosives in the left crosscut of room 4. The driller and blaster were then working on the opposite sides of the same wall.

12. While the driller was drilling the last hole in the right crosscut of room 5, the drill intersected a charged hole in the left crosscut of room 4, resulting in an explosion which fatally injured Smith.

13. According to FMC drilling procedures, ". . . the drill operator must make sure of the location to be drilled to insure that he will not drill into places that are already tamped or being tamped with explosives."

ISSUES

Was there a violation of 30 C.F.R. 57.6-107 on June 10, 1980, and, if so, what is the appropriate penalty?

DISCUSSION

Smith failed to follow FMC procedures in that he did not finish preparing the face of room 4 for blasting before he moved on to the left crosscut. Smith's supervisor told him a short time before the accident to check in room 5 to make sure the driller was finished before he charged the left crosscut of room 4. It was also the duty of the driller to ensure that he would not drill into places that were "already tamped or being tamped with explosives." These acts or omissions caused the drill to intersect the previously drilled and charged hole.

FMC argues that there was no violation of the cited regulation because drilling was not occurring where there was a danger of intersecting a charged hole, and that the only reason a charged hole was intersected was due to the negligence of Smith. In other words, the standard merely prohibits an operator from drilling in an area where there is a reason to know that there is a possibility or a danger of intersecting a charged hole. Since there was no reason for FMC or the driller to know that Smith would not be following the prescribed procedures, there was no reason to believe that the driller would intersect a charged hole.

This argument overlooks the fact that the driller also did not comply with FMC's own drill operator requirements. According to one rule, the drill operator must ensure that he will not drill into places that are already tamped or being tamped with explosives. The drill operator failed to do this.

There was danger of intersecting a charged hole because both the drill operator and blaster were working in adjacent rooms. This condition alone created the danger, and, thus required that steps be taken to ensure that the drill did not intersect a charged hole. The evidence shows that

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neither the blaster nor the drill operator took the precautions required by FMC or both miners would have known exactly where the other was working, and the accident could have been avoided. Since there was danger of intersecting a charged hole, the hole should not have been drilled, according to the cited regulation. Thus, I find that there was a violation of 30 C.F.R. 57.6-107, as alleged.

I find that the proximate cause of the violation was the failure of the blaster and the drill operator to follow supervisors instructions and FMC's specific work rules. However, the Act imposes strict liability on the mine operator in cases where employee misconduct has caused a violation of a regulation. Citation *Heldenfells Brothers, Inc., v. Marshall* and FMSHRC, 2 MSHC 1107 (5th Cir. 1981). Lack of negligence on the part of FMC acts to mitigate the proposed civil penalty.

CONCLUSION OF LAW

The Secretary has proven by a preponderance of the evidence that FMC violated 30 C.F.R. 57.6-107, as alleged in Citation 337613.

ORDER

Citation No. 337613 is affirmed, the Notice of Contest is dismissed, and FMC is ordered to pay a civil penalty in the sum of \$500.00 within 30 days of the date of this Decision.

Jon D. Boltz
Administrative Law Judge