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SOL (MSHA) V. ALLIED CHEMICAL
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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

Civil Penalty Proceeding

Docket No: WEST 81-243-M
A.O. No: 48-00155-05070

v.

Alchem Trona Mine

ALLIED CHEMICAL CORPORATION,
RESPONDENT

DECISION

Appearances: Stephen P. Kramer, Esq., Office of the Solicitor,
U.S. Department of Labor, for Petitioner
John A. Snow, Esq., for Respondent

Before: Judge Moore

The above case originally involved 6 citations, 5 of which involved the dust standard. At the trial, government counsel moved to dismiss the 5 dust violations because the testing criteria had been changed since the issuance of the citations, the chain of possession criteria had been changed, and counsel did not believe that he could prevail in view of the current rules. I granted the motion and all citations except citation 577319 issued on December 17, 1980 alleging a violation of 30 C.F.R. 57.3-22 were vacated.

Citation No. 577319 alleges a violation of 30 C.F.R. 57.3-22 in that "there was loose ground on the back and rib in 5 room between 18 and 19 crosscut in B-92 panel. The panel is down at the time of inspection. The pieces of loose measured approximately 12" by 18" times by 12" thick. A piece from the rib measured approximately 20" by 18" by 34" thick." There was considerable dispute as to where the loose roof and rib were located in the mine, but there is no question but that the condition existed and that the two pieces of trona were barred down by an employee of the company. No management personnel were in the immediate vicinity with the two inspectors when they observed the condition, however.

The inspector stated that even though this was an idle shift, a workman was observed in the vicinity of an electrical power station 200 feet away from the loose pieces of trona. The loose material was in an entry or room and the power station was in a crosscut. Thus the 200 foot distance would include a ninety degree turn. The company records show that even though this was an idle shift, the required roof and rib

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inspection had been made, but it showed no bad roof or rib conditions. The inspector stated that in retreat mining, and that is what was being done in this panel, trona can become cracked and loose in a matter of ten minutes.

The standard requires that miners examine and test the back, face and rib of their working places at the beginning of each shift, and frequently thereafter and it also requires that supervisors examine the ground conditions during daily visits. Inasmuch as there is no evidence that the supervisors did not make the necessary examination, MSHA's case depends upon whether the miner that was working in the vicinity of the electrical distribution center was required to examine the area of the loose pieces before working at the distribution center. The standard says that miners shall examine "their working places." 30 C.F.R. 57.2 defines a working places as "any place in or about the mine where work is being performed." Except for the inspection party, there were at most two people working in the panel at the time of the citation. Only one of the two people was observed but it was assumed that he was accompanied by someone else. I cannot construe the standard to require a worker to go 200 feet inby his working station to examine for loose roof and ribs. He must make the examination in his immediate working area and there is no evidence that the workman observed by the inspector did not act in accordance with the standard.

The citation is vacated and the case is dismissed.

Charles C. Moore, Jr.,
Administrative Law Judge