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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

FMC CORPORATION,  
CONTESTANT  
v.  
SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

CONTEST OF CITATION PROCEEDINGS

DOCKET NO. WEST 81-131-RM

MINE: FMC

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

CIVIL PENALTY PROCEEDINGS

DOCKET NO. WEST 81-234-M

MINE: FMC

FMC CORPORATION,  
RESPONDENT

Appearances:

John A. Snow, Esq., VanCott, Bagley, Cornwall & McCarthy  
Salt Lake City, Utah,  
for the FMC Corporation

Robert J. Lesnick, Esq., Office of H  
enry C. Mahlman, Associate Regional Solicitor  
United States Department of Labor, Denver, Colorado,  
for the Secretary of Labor

Before: Judge John J. Morris

DECISION

In these consolidated cases the FMC Corporation, (FMC),  
contests an order of withdrawal issued by the Mine Safety and  
Health Administration, (MSHA), for an alleged violation of Title  
30, Code of Federal Regulations,

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57.6-177. (FOOTNOTE- 1) The Secretary of Labor, on behalf of MSHA, seeks to impose a civil penalty for the alleged violation.

All of the proceedings herein arise under the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq. (Supp. III, 1979).

After notice to the parties a hearing on the merits was held in Green River, Wyoming on September 2, 1981.

FMC filed a post trial brief.

#### ISSUES

The issues are whether FMC violated the regulation and, if so, what penalty is appropriate.

#### SUMMARY OF THE EVIDENCE

Ammonium nitrate, (ANFO), a blasting agent, has the appearance and texture of BBs. The explosive is mixed with fuel oil (Tr. 5, 49). In its underground trona mine FMC explodes the ANFO with high velocity cap and dynamite. These serve as a primer. An 18 inch water bag acts as a stemming device (Tr. 6, 11, 44).

After the blast the area is mucked out. Roof bolts provide overhead protection (Tr. 6).

On the day of the inspection an MSHA representative found two misfires (Tr. 7, 8, P1, P2). Ignition wires were sticking out of one of the drilled holes. FMC washed out the misfire holes after the withdrawal order was issued (Tr. 9, P2).

The top hole: was shot "clear through" and both sides of the hole could be seen. No cap or primer could be seen. No cap or primer washed out (Tr. 9, 31, 39, 42-43, 50-51).

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The bottom hole: detonation wires were sticking out. It could not be determined if the hole had fired. Only the blasting agent (ANFO) could be seen in the hole (Tr. 50-51).

The holes had been primed and fired on the swing shift the previous night. This was 11 hours before the inspection (Tr. 12, 15). The day shift foreman hadn't seen the misfires (Tr. 13).

In everyday use ANFO is as inert as cement. It is insensitive to friction, drop weight, and cap sparks. Shooting it with a bullet will not cause it to explode (Tr. 67, 68).

If over compacted, as from a blast, ANFO will desensitize (Tr. 68). But the compaction of ANFO to the point of being inert cannot always be determined (Tr. 70, 74).

#### DISCUSSION

MSHA's witness defines a misfire as a drilled hole loaded with explosives which did not fire on the initial detonation (Tr. 27).

The Secretary's definition in Title 30, Code of Federal Regulations, Section 57.2 states:

Misfire means the complete or partial failure of a blasting charge to explode as planned.

The facts here establish a violation of the regulation. Both the top and bottom holes had misfired.

The misfire in the top hole was somewhat more obscure than the bottom hole since it had "shot through," that is, the hole on the back side of the blast would indicate that the primer and cap had exploded (Tr. 27). No evidence was presented as to precise appearance of a drill hole after it is "shot through".

The misfire in the bottom hole was more readily apparent since the detonation wires were still hanging out of the hole after the blast (Tr. 39, P2).

The presence of ANFO, the explosive, in the drill hole after the blast, fairly indicates at least a partial failure of the blasting charge. It accordingly falls within the definition of a misfire.

#### CONTENTIONS

FMC contends that no misfire occurred, further, the drill holes contained only ANFO, and, finally, that even if a violation occurred the proposed civil penalty is excessive.

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FMC's initial contention is that the drill holes observed by the MSHA inspector were not misfires. This position evolves in this fashion: 30 C.F.R. 57.6-8 (FOOTNOTE- 2) and 30 C.F.R. 57.6-190 (FOOTNOTE- 3) refer to ammonium nitrate as blasting agents therefore ammonium nitrate is not a "blasting charge" as contemplated in the regulatory definition of a misfire.

FMC correctly observes that the term "blasting charge" is not defined in the regulations. However, a common definition in a mining dictionary is that a "charge" is the explosive that is loaded into the borehole for blasting. (FOOTNOTE- 4) In short, the charge is the total explosive package. In this case it includes the primer, the ammonium nitrate, and the dynamite.

FMC places considerable reliance on the fact when the drill holes were washed out no cap or primer were observed. Therefore, it concluded the holes contained only ANFO.

FMC's view of the evidence is based on hind sight. With the wires sticking out of the bottom hole a strong possibility of a misfire existed. It is true that no cap or primer were found in either hole but one cannot ignore the fact that some of the material in the hole was originally a part of the explosive charge. FMC aptly states that the obvious purpose of 30 C.F.R. 57.6-77 is to avoid the possibility of an unplanned detonation of a live charge. In short, what appears to be a misfire should be treated as a misfire.

FMC also argues that any ANFO in the drill hole would have been inert after an explosion. Therefore, it presented no hazard.



(b) Reattempting to fire the holes if leg wires are exposed; or

(c) Inserting new primers after the stemming has been washed out.

~FOOTNOTE TWO

2 57.6-8 Mandatory. Ammonium nitrate-fuel oil blasting agents shall be physically separated from other explosives, safety fuse, or detonating cord stored in the same magazine and in such a manner that oil does not contaminate the other explosives, safety fuse, or detonating cord.

~FOOTNOTE THREE

3 Sensitized Ammonium Nitrate Blasting Agents All of the standards in this 57.6 in which the term "explosives" appears are applicable to blasting agents (as well as to other explosives) unless blasting agents are expressly excluded.

General -- Surface and Underground

57.6-190 Sensitized ammonium nitrate blasting agents, and the components thereof prior to mixing, should be mixed and stored in accordance with the recommendations in Bureau of Mines Information Circular 8179, "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," or subsequent revisions.

~FOOTNOTE FOUR

4 A dictionary of Mining, Mineral, and related terms, United States Department of Interior, 1968.