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SOL (MSHA) V. ARCH MINERALS
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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

v.

DOCKET NO. WEST 81-205

ARCH MINERAL CORPORATION,
RESPONDENT

Appearances:

Katherine Vigil Esq.
Office of Henry C. Mahlman Associate Regional Solicitor
United States Department of Labor
Denver, Colorado,
for the Petitioner

Brent L. Motchan Esq.
Arch Mineral Corporation
St. Louis, Missouri,
for the Respondent

Before: Judge John J. Morris

DECISION

The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges respondent, Arch Mineral Company, with

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violating Title 30, Code of Federal Regulations, Section 77.1707(b), (FOOTNOTE 1) a regulation adopted under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq.

After notice to the parties a hearing on the merits was held in Laramie, Wyoming.

ISSUES

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

STIPULATION

The parties stipulated that this mine annually produces 2,719,890 production tons of coal of respondent's total annual production of 8,719,876 tons (Tr. 3). In the prior 24 months no violations have been assessed against respondent involving this regulation. Finally, respondent's ability to remain in business will not be impaired by payment of the proposed penalty (Tr. 3).

SECRETARY'S EVIDENCE

Michael S. Horbatko, a federal coal mine inspector, experienced in mining, conducted an AAA inspection of respondent's Seminoe No. 2 Mine on November 18, 1980 (Tr. 6-9).

The inspector was on the access ramp to the #78 open pit. The pit measures 500 yards in length by 100 yards wide. It is 100 feet deep (Tr. 9, 12). A front end loader was loading coal on a truck from an exposed coal seam (Tr. 14-15).

On the haul road from No. 78 pit back to the mine office, respondent's safety director identified a box as a first aid station (Tr. 10). The box was missing 12 one inch adhesive bandages as well as a rubber blanket. The bandages are used for minor injuries and the blanket protects against shock (Tr. 11, 12).

In addition to the dragline there were haul trucks and a coal drill in the pit (Tr. 15). The dragline is 90 feet above the pit bottom some 200 yards from the aid station (Tr. 16). The inspector found no violations in the first aid kit located on the dragline (Tr. 20).

The area around the first aid station was not a preparation plant or a shop. Further, it was not an installation where 10 or more people were regularly employed (Tr. 22).

RESPONDENT'S EVIDENCE

Doug Hunter, safety director at the No. 2 Seminoe Mine, is a person experienced in mining (Tr. 27-29).

In this pit at the time of the inspection was a 752 B machine, pieces of equipment, a dragline, a tractor, and a 45 R drill (Tr. 29-30).

Respondent maintains a complete first aid station on all draglines as well as on the 752 B machine (Tr. 31). They contain all the supplies listed in 77.1707(b). The drill has a standard first aid kit for 16 people (Tr. 31). The foremen also carry first aid kits in their pickup trucks (Tr. 31). A fully equipped ambulance is kept at the main office, some eight miles away (Tr. 32, 39).

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The safety director replaces the supplies in the first aid kit when he learns of a deficiency by being informed or upon observing it during inspections (Tr. 39).

DISCUSSION

No post trial briefs were filed but the Secretary in his closing argument asserted that the fact of the violation is unrefuted (Tr. 46-47). On the other hand respondent maintains this first aid box was placed at the site for its rescue teams and not to comply with federal regulations (Tr. 47-48).

In *Golden R. Coal Company*, 2 FMSHRC 446, (1980), Commission Judge Edwin S. Bernstein criticised this standard as one "drafted in an ambiguous and confusing manner", 2 FMSHRC at 448. This same confusing standard remains in effect three years later.

However, it is unnecessary to rule on the ambiguity of the regulation in this case because I credit respondent's evidence that there were complete first aid stations on all of the dragline and the 752 B machines. These first aid stations contain all of the supplies listed in 77.1707(b) (Tr. 31).

The inspector confirms that he saw first aid equipment on the dragline and there were no violations regarding such equipment (Tr. 20).

In this circumstance respondent was maintaining first aid supplies within the mandate of the regulation.

Based on the foregoing findings of fact and conclusions of law, I enter the following:

ORDER

Citation 1013751 and all proposed penalties therefor are vacated.

John J. Morris
Administrative Law Judge

FOOTNOTE START HERE-

1 77.1707 First aid equipment; location; minimum requirements.

(a) Each operator of a surface coal mine shall maintain a supply of the first aid equipment set forth in paragraph (b) of this section at or near each working place where coal is being mined, at each preparation plant and at shops and other surface installation where ten or more persons are regularly employed.

(b) The first aid equipment required to be maintained under the provisions of paragraph (a) of this section shall

include at least the following:

- (1) One stretcher;
 - (2) One broken-back board (if a splint-stretcher combination is used it will satisfy the requirements of both subparagraphs (1) of this paragraph and this subparagraph (2));
 - (3) Twenty-four triangular bandages (15 if a splint-stretcher combination is used);
 - (4) Eight 4-inch bandage compresses;
 - (5) Eight 2-inch bandage compresses;
 - (6) Twelve 1-inch adhesive compresses;
 - (7) An approved burn remedy;
 - (8) Two cloth blankets;
 - (9) One rubber blanket or equivalent substitute;
 - (10) Two tourniquets;
 - (11) One 1-ounce bottle or aromatic spirits of ammonia or 1 dozen ammonia ampules; and,
 - (12) The necessary complements of arm and leg splints or two each inflatable plastic arm and leg splints.
- (c) All first aid supplies required to be maintained under the provisions of paragraphs (a) and (b) of this section shall be stored in suitable, sanitary, dust tight, moisture proof containers and such supplies shall be accessible to the miners.