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

FMC CORPORATION,
CONTESTANT-RESPONDENT

Contest of Citation

v.

Docket No. WEST 82-146-RM
Citation No. 577552 3/10/82

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

Civil Penalty Proceeding

Docket No. WEST 82-207-M
A/O No. 48-00152-05501

FMC Mine

DECISION

These matters came on for a hearing on the parties' stipulation of material facts not in dispute and supplementary testimony. The dispositive issue is whether the agreed upon facts show that 9.5 pallets of Anfo, a blasting agent, was in "storage" as that term is used in the mandatory safety standard set forth in 30 C.F.R. 57.6-5 at the time the challenged citation was written.

Findings

At approximately 8:05 a.m., Wednesday, March 10, 1982, shortly after the beginning of the day shift at the FMC Mine, Gary Hornsby, the foreman in charge of hauling, supervised the unloading of forty-two, 50 pound bags of an explosive, Anfo, in the storage yard of the #3 shaft. By happenstance the area in the yard where the Anfo was unloaded to await further movement underground was within 8 feet of a 500 gallon portable oil dispensing tank. This tank was, at the time, full of hydraulic fluid, a combustible. A small amount of the hydraulic fluid was spilled under the tank.

It was the operator's regular practice to unload Anfo in the yard of the #3 shaft prior to transporting it to the shaft and dispatch to the face areas of the mine. Normally the Anfo was moved from the yard into the underground areas of the mine by 1:00 p.m. of the day it arrived.

30 C.F.R. 57.6-5 provides in pertinent part that:

Areas surrounding . . . facilities for the storage of blasting agents shall be kept clear of rubbish, brush, dry grass, or trees (other than live trees more than 10 feet tall), for a distance of not less than 25 feet in all directions, and other unnecessary combustible materials for a distance of not less than 50 feet.

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30 C.F.R. 57.6-43 provides:

Vehicles containing explosives or detonators shall be posted with proper warning signs.

30 C.F.R. 57.6-65 provides:

Vehicles containing detonators or explosives, other than blasting agents, shall not be left unattended except in blasting areas where loading or charging is in progress.

At approximately 9:40 a.m., a Federal Mine Inspector observed the info sitting in the yard of the #3 shaft next to the tank of hydraulic fluid. He was immediately concerned that the explosive was located so near an "unnecessary combustible," the tank of hydraulic fluid.

The inspector immediately called the condition to the attention of the foreman, Mr. Hornsby, and at 10:15 a.m. wrote a 104(a), S&S citation that charged a violation of 30 C.F.R. 57.6-5 only. The citation stated:

There were approx. 9-1/2 pallets of ammonium nitrate fuel oil blasting agent stored in the #3 Shaft storage yard. These pallets were about 8 feet from a 500 gal. portable oil dispensing tank. This tank was checked and found to be full of hydrolic oil. There was also a small accumulation of oil under this tank. There were no explosive signs in the area and the blasting agents were not attended. Each pallet contains 42 bags of blasting agent, each weighing 50 pounds.

The portable oil tank was removed immediately. In addition, guards here stationed and the Anfo posted with "Danger Explosives" signs. Thus, the condition was abated within an hour and a half after the Anfo was unloaded in the yard.

Conclusions

The operator contends the area identified in the citation was not a "facility for storing blasting agents" within the meaning of the standard because the Anfo was in transit for use in the underground areas of the mine. The Secretary, on the other hand, claims that the fact that the Anfo was unloaded in the storage yard awaiting further movement to the underground face areas and that it was the regular practice of the operator to handle the Anfo in this manner for periods up to five or six hours created a hazard against which the standard was directed, namely, the occasion for the placement of explosives in close proximity to unnecessary combustibles.

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Both parties seek to make a fortress of the dictionary. Words, of course, are but the skin of living thoughts and must be assigned meanings in the real world consonant with the physical context fairly envisioned at the time of their utterance. There is no dispute about the fact that the yard of the #3 Shaft was a "facility" or that it was used as a holding area for materials intended for use in the underground parts of the mine. All storage connotes a temporary placement awaiting further movement or transport to the place of ultimate rest or use.

It is true, as the operator points out, that the impermissible storage here was relatively brief. But the point is that even during that brief period, an hour and a half, the Anfo was within an impermissible proximity to the combustible hydraulic fluid. I find, therefore, that for that period of time the Anfo was in impermissible storage within the meaning of the standard cited and that the violation charged did, in fact, occur.

I further find that the additional conditions cited, namely, the absence of a guard or danger signs were not a violation of the 30 C.F.R. 57.6-43 or 57.6-65 inasmuch as the explosives were not on a vehicle.

Order

Accordingly, it is ORDERED that (1) the validity of the citation be, and hereby is, AFFIRMED; and (2) that in accordance with the parties' stipulation the amount of the penalty warranted is \$119.00. It is FURTHER ORDERED that the operator pay the penalty assessed on or before Friday, April 15, 1983 and that subject to payment the captioned matters be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge