

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

333 W COLFAX AVENUE, SUITE 400
DENVER, COLORADO 80204

001 1 1984

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 83-55-M
Petitioner : A.C. No. 24-01607-05503
: :
v . : Elk Creek Mine
: :
MONTANA CONTRACT MINING CO., :
Respondent :

DECISION

Appearances: James H. Barkley, Esq., and Margaret A. Miller, Esq.
Office of the Solicitor, U.S. Department of Labor,
Denver, Colorado,
for Petitioner;
Mrs. M.J. Good, Montana Contract Mining Company,
Greenough, Montana, pro se.

Before: Judge Morris

This case, heard under the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq., (the "Act"), arose from an inspection of the Elk Creek Mine. The Secretary of Labor seeks to impose civil penalties because respondent allegedly violated safety regulations promulgated under the Act.

Respondent denies it violated the regulations.

After notice to the parties, a hearing on the merits was held in Missoula, Montana on April 18, 1984.

The parties waived their right to file post-trial briefs.

Issues

The issues are whether respondent violated the regulations; if so, what penalties are appropriate.

Citations

Citation 2081208 alleges a violation of Title 30 Code of Federal Regulations, Section 57.4-24 which provides as follows:

- 57.4-24 Mandatory. Fire extinguishers and fire suppression devices shall be:
- (a) Of the appropriate type for the particular fire hazard involved.
 - (b) Adequate in number and size for the particular fire hazard involved.
 - (c) Replaced with a fully charged extinguisher or device, or recharged immediately, after any discharge is made from the extinguisher or device,
 - (d) Inspected, tested, and maintained at regular intervals according to the manufacturer's recommendations.
 - (e) Approved by the Underwriter's Laboratories, Inc., or other competent testing agency acceptable to the Mining Enforcement and Safety Administration.

Citation 2081209 alleges a violation of 30 C.F.R. § 57.6-1 which provides:

General-Surface and Underground

57.6-1 Mandatory. Detonators and explosives other than blasting agents shall be stored in magazines.

Summary of the Evidence

MSHA Inspector Seibert Smith, a person experienced in mining, inspected respondent's underground barite mine for two days commencing December 28, 1982 (Tr. 7, 9).

Four employees of respondent and two contract core drillers were at the mine site (Tr. 9, 10). They were drilling core samples (Tr. 10).

The inspection party went into the main generator area. A 225 volt DELCO generator was providing electricity. Within six feet of the generator were diesel fuel, motor oil, 7 cases of 50 pound boxes of DuPONT powder and one 50 pound bag of a Prell type blasting agent (Tr. 11-13, 23).

The DuPONT explosives were not a blasting agent. They were high explosives. They should have been stored in a proper magazine (Tr. 13, 14). There was, in fact, an ATF ^{1/} approved magazine outside the mine, some 50 feet from the portal (Tr. 13).

1/ Alcohol, Tobacco and Firearms, an agency of the federal government (Tr. 22).

A powder cache of 350 pounds is significant. No explosives were being used on the day of the inspection. But in this small mine one case of powder would be sufficient for a day's blasting (Tr. 23).

Garth Good told the inspector that the explosives were brought in because they felt they would freeze if they were left outside (Tr. 16). The company was aware of the condition but the core drillers were surprised (Tr. 17-21).

There was no fire extinguisher in the mine (Tr. 12).

In the inspector's opinion a fire extinguisher should be available. A fire could be caused by a spark from the generator exploding the diesel fuel (Tr. 12). The inspector further indicated that if an explosion occurred the concussion could kill the miners in the shaft (Tr. 14, 16). If the condition remained unabated it was reasonably likely that an explosion could occur (Tr. 15).

The violation was abated when four fire extinguishers were purchased and installed. The fuel and explosives were carried by hand out of the mine (Tr. 20, 24, 25).

Respondent offered no evidence to rebut the facts of the violation.

Discussion

The evidence establishes that powder was stored outside of a magazine; further, there were no fire extinguishers in the underground area where the generator was located.

The uncontroverted evidence establishes a violation of both regulations and the citations should be affirmed.

CIVIL PENALTIES

The criteria for assessing civil penalties are contained in 30 U.S.C. 820(i).

In connection with these factors, on this consolidated record, I find the following facts: In the two years before December 29, 1982, respondent was assessed six violations (Exhibit P1 in WEST 83-55-M).

The proposed penalties do not appear inappropriate in relation to the size of the operator. The operator's negligence was high inasmuch as all of the violative conditions were readily apparent and could have been corrected. The penalties proposed should not affect the operator's ability to continue in business. The record reflects the company has been shut down since March 15, 1983. But it is further indicated the company is waiting for market conditions to improve (Tr. 25, 26).

On the record the gravity of these violations is exceedingly high. A fire, with no extinguisher to inhibit it, could readily ignite the explosives. There was enough powder on hand to create a minor Mount St. Helens.

To respondent's credit is the fact that the company has always fully cooperated with MSHA.

The violations here are of a basic and serious nature. I am unwilling to disturb the Secretary's proposed penalties.

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

ORDER

1. Citation 2081208 and the proposed penalty of \$20.00 are affirmed.
2. Citation 2081209 and the proposed penalty of \$195.00 are affirmed.
3. Respondent is ordered to pay to the Secretary of Labor the sum of \$215.00 within 40 days of the date of this decision.


John J. Morris
Administrative Law Judge

Distribution:

James H. Barkley, Esq., and Margaret Miller, Esq., Office of the Solicitor, U.S. Department of Labor, 1585 Federal Building, 1961 Stout Street, Denver, Colorado 80294 (Certified Mail)

Mrs. M.J. Good, Montana Contract Mining, P.O. Box 351, Greenough, Montana 59836 (Certified Mail)

/blc