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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. SE 85-42
A.C. No. 01-01247-03631

v.

No. 4 Mine

JIM WALTER RESOURCES, INC.,
RESPONDENT

DECISION

Appearances: George D. Palmer, Esq., Office of the Solicitor,
U.S. Department of Labor, Birmingham,
Alabama, for Petitioner;
Harold D. Rice, Esq., and R. Stanley Morrow,
Esq., Birmingham, Alabama, for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks a civil penalty for an alleged violation by Respondent of its approved ventilation plan and therefore of 30 C.F.R. 75.316. Pursuant to notice the case was heard in Birmingham, Alabama on June 18, 1985. Terry Gaither and William H. Meadows testified on behalf of the Secretary. Eddie Nicholson and John Stephenson testified on behalf of the Operator. Both parties have filed post hearing briefs. I have considered the entire record and the contentions of the parties and make the following decision.

FINDINGS OF FACT

1. Respondent is the owner and operator of an underground coal mine in Tuscaloosa County, Alabama, known as the No. 4 Mine.

2. The subject mine has been classified as a gassy mine. It liberates almost 30 million cubic feet of methane in a 24 hour period. The face liberation of methane while cutting is in excess of 400 cubic feet a minute. The mine has been described as one of the more gassy coal mines in the country:

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"It would rate in the top 10 percent." (Tr. 69) It is a deep mine: the shaft is approximately 2000 feet deep.

3. The approved ventilation, methane and dust control plan was changed in 1972 for Respondent's mines to include the following language:

Line brattice shall be maintained to within 10 feet of the area of deepest penetration of all faces in all working places inby the last open crosscut at all times except while roof bolting and servicing as stated in the plan.

This language was included in the plan which was in effect for the subject mine since it was opened, and was in effect in November 1984.

4. On November 13, 1984, Federal Coal Mine Inspector Terry Gaither issued a citation charging a violation of 30 C.F.R. 75.316 because the line brattice in the No. 3 entry on the No. 4 section was 15 feet outby the entry face.

5. On November 13, 1984, four entries were being driven in the section in question. The No. 3 and 4 entries, and perhaps all four entries, had been driven beyond the point where a crosscut right (between entries 3 and 4) was begun. The line curtain was within ten feet of the face in the crosscut right (it was approximately 5 feet from the face when the citation was issued); however the line curtain in the No. 3 entry was fifteen feet from the face. Mining was not being performed in either the entry or the crosscut at the time the citation was issued, but it had been most recently done in the crosscut right.

6. A methane test was taken in the corner of the No. 3 entry before the citation was issued. It showed less than 1 percent methane.

7. Mining had last been performed in the No. 3 entry on the day prior to the issuance of the citation.

8. Before mining would be resumed in the No. 3 entry, the crosscut right would have to be completed to the yield pillar and the crosscut left would have to be turned and completed. This would normally take 2 to 3 days.

9. Prior to 1984, no citations were issued at the subject mine for alleged violations similar to the one involved here--that is, for failure to maintain line

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brattice to within 10 feet of an entry face, after a crosscut was turned.

REGULATORY PROVISIONS

30 C.F.R. 75.316 provides as follows:

75.316 Ventilation system and methane and dust control plan.

[STATUTORY PROVISIONS]

A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form on or before June 28, 1970. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every 6 months.

30 C.F.R. 75.2(g) provides as follows:

(g)(1) "Working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle,

(2) "Working place" means the area of a coal mine in by the last open crosscut,

(3) "Working section" means all areas of the coal mine from the loading point of the section to and including the working faces,

(4) "Active workings" means any place in a coal mine where miners are normally required to work or travel;

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30 C.F.R. 75.302-1(a) provides as follows:

(a) Line brattice or any other approved device used to provide ventilation to the working face from which coal is being cut, mined or loaded and other working faces so designated by the Coal Mine Safety Manager, in the approved ventilation plan, shall be installed at a distance no greater than 10 feet from the area of deepest penetration to which any portion of the face has been advanced unless a greater distance is approved by the Coal Mine Safety District Manager of the area in which the mine is located.

ISSUE

Whether Respondent is obliged to maintain line curtain within 10 feet of all faces, or only the face from which coal is being extracted or was most recently extracted?

CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in the operation of the subject mine, and I have jurisdiction over the parties and subject matter of this proceeding.

2. Section 75.316 of Title 30 C.F.R. requires that a mine operator adopt and have approved a ventilation system and methane and dust control plan suitable to the conditions and the mining system of the coal mine. When such a plan has been adopted and approved, the section requires the operator to comply with its provisions. *Mid-Continent Coal and Coke Company*, 3 FMSHRC 2502 (1981).

3. The approved ventilation, methane and dust control plan in effect at the subject mine on November 13, 1984 required that line curtains be maintained within 10 feet of all faces in all working places. A "coal face" is defined in *A Dictionary of Mining, Mineral and Related Terms*, U.S. Department of the Interior (1968) as

a. The mining face from which coal is extracted by longwall, room, or narrow stall system. Nelson. b. A working place in a colliery where coal is hewn, won, got, gotten from the exposed face of a seam by face workers. Pryor, 3.

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This definition obviously is not limited to the time during which coal is actually being extracted. It includes working faces as well as faces from which coal has been or will be extracted. The language of the approved plan is all inclusive and clearly includes entry No. 3 cited in this case. The obvious purpose of the changes made in 1972 was to go beyond the requirement of 30 C.F.R. 75.302-1(a) that line brattice be installed no more than 10 feet from active working faces. All faces, including idle faces, are covered by the plan. The reason for their inclusions is the unusually high methane liberation in the mine. Respondent argues that the requirement is onerous and that it has not been enforced by MSHA prior to 1984. Neither of these arguments can affect the interpretation of the wording of the plan, and I reject them.

4. I conclude that Respondent was in violation of its approved ventilation, methane and dust control plan on November 13, 1984 in failing to maintain line curtain within 10 feet of the face in entry No. 3 on the No. 4 section in the subject mine. The violation was abated in good faith.

5. Respondent is a medium sized operator and has an average history of prior violations. The imposition of a penalty will have no affect on Respondent's ability to continue in business.

6. I conclude that the violation cited was moderately serious. I am unable to conclude from the evidence whether the violation resulted from Respondent's negligence. Therefore, I conclude that it did not.

7. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$100.

ORDER

Based on the above findings of fact and conclusions of law, Respondent is ORDERED to pay the sum of \$100 within 30 days of the date of this decision as a civil penalty for the violation found herein.

James A. Broderick
Administrative Law Judge