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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. WEST 84-100-M
A.C. No. 42-01789-05502

Cottonwood Mine

HYDROCARBON RESOURCES, INC.,
RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for the Petitioner;
Mr. Chad Evans, Former General Manager, Hydrocarbon
Resources, Inc., Salt Lake City, Utah, pro se.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges respondent with violating safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq., (the Act).

After notice to the parties, a hearing on the merits took place on May 21, 1985, in Salt Lake City, Utah.

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

There are four citations contested in this case.

Citation 2008144 alleges a violation of 30 C.F.R. 57.322, now codified as 57.3022, which provides as follows:

Miners shall examine and test the back, face, and rib of their working places at the beginning of each shift and frequently thereafter. Supervisors shall examine the ground conditions during daily visits to insure that proper testing and ground control practices are being followed. Loose ground

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shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

Citation 2008145 alleges a violation of 30 C.F.R. 57.19110, now codified as 57.19110, which provides as follows:

A substantial bulkhead or equivalent protection shall be provided above persons at work deepening a shaft.

Citation 2008146 alleges a violation of 30 C.F.R. 57.1924(b), now codified as 57.19025, which provides as follows:

(a) Wire rope shall be attached to the load by a method that develops at least 80 percent of the nominal strength of the rope.

(b) Except for terminations where use of other materials is a design feature, zinc (spelter) shall be used for socketing wire ropes. Design feature means either the manufacturer's original design or a design approved by a registered professional engineer.

(c) Load and attachment methods using splices are prohibited.

Citation 2008147 alleges a violation of 30 C.F.R. 57.1137, now codified as 57.11037, which provides as follows:

Ladderways constructed after November 15, 1979, shall have a minimum unobstructed cross-sectional opening of 24 inches by 24 inches measured from the face of the ladder.

Stipulation

At the commencement of the hearing the parties stipulated that Bruce Green, an employee of respondent, was fatally injured when struck by a falling rock.

Respondent's representative further stated that the company has six employees. In addition, respondent has gross income under \$10,000 (Tr. 69).

The Secretary's Case

After being advised of a fatality, MSHA, by its Inspector Ronald L. Beason, inspected respondent's Cottonwood Mine on December 28, 1982 (Tr. 1316). The mine was under development and at the time the only

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activity was the driving of a shaft, by hand, at the 415-foot level (Tr. 16, 80). The vertical 12-foot-wide shaft went from foot wall to hanging (FOOTNOTE 1) wall. A slight bend could be observed in the shaft as it descended (Tr. 17, 18).

The shaft was divided into three compartments. They consisted of a utility compartment with a vent line, a manway compartment with an emergency escapeway and a skip compartment. The skip compartment, through which the mine is entered, was an open 8 by 8 foot area (Tr. 18, 19). The skip bucket was 22 inches thick, i.e., from front to back. It had a one-ton capacity and measured 46 inches wide and 48 inches deep (Tr. 19, 20).

Bruce Green was killed on December 23, 1982. On the day of the subsequent inspection the bottom 100 feet of the mine had filled with water (Tr. 20, 21). The inspector learned of the configuration of the bottom of the shaft from the company's representative, Chad Evans (Tr. 22).

At the time of the accident the mining procedure was for the miners to hand muck the ore in the bottom of the shaft. They would thereafter hand muck the ore into the skip bucket when it returned after a six-minute trip to the surface. When the skip was filled and moved to the surface, the miners would continue digging in the skip compartment and move the ore to the utility and manway compartments (Tr. 22-25, 29-30). The company had been mining in this manner for three weeks. Prior to that time the miners used a vacuum system to move the gilsonite to the surface. But that system became inoperative three weeks before the accident (Tr. 22).

When the bucket went up and down the shaft it dragged the sides and the hanging wall (Tr. 28). When the inspector descended into the shaft he observed and sounded the loose ground in a number of areas. The following levels were tested: 10 to 60, 163, 170, 177, 190, 200, 215, 240, 290, 300, 315 and 320. There was a large hump at the 260-foot level where the shaft went from hanging to foot wall. At this point the gilsonite vein separated from the shaft (Tr. 28, 34-38). There were no bolts or lagging to prevent rocks from falling into the shaft (Tr. 40). There was danger that the whole area of the hanging wall could fall from the 10-foot level to the 60-foot level. A number of rocks had fallen (Tr. 40).

In the inspector's opinion the condition of loose ground he observed five days after the fatality, especially at the 60-foot level, also existed on the day of the accident (Tr. 39, 40, 49).

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The skip compartment did not have a bulkhead (Tr. 29-31). When using the vacuum system the skip itself could be used as a bulkhead; however, it could not serve as such when it was hauling ore to the surface. There was a two-foot opening on each side of the skip. This would permit rocks to fall and strike miners (Tr. 31-33). The company had a type of a bulkhead at the surface. This bulkhead would not prevent loose material from dropping down the shaft. Its function was to prevent ore from dropping down the shaft after it had been dumped at the surface (Tr. 33).

In a mine of this type a bulkhead should be positioned immediately over the miners working in the bottom of the shaft. The bulkhead protects the miners from being struck by any material that might fall in the shaft. There were bulkheads over the utility and manway compartments together with a landing every ten feet (Tr. 26-29, 62-63).

Bruce Green was killed when he was struck by a 6 by 6 by 1/2 inch rock. At the time Green and his father were basically under the utility compartment. Bruce Green had reached out and was mucking in the bottom of the shaft (Tr. 41, 42, 61). A proper bulkhead over the skip would have prevented the rock from striking the miner (Tr. 42).

The company's log books failed to indicate that there had been any shaft inspection from December 21 through December 23 (Tr. 44).

Inspector Beason also inspected the six U-bolts that held the rope to the skip bucket. The saddle was on the shorter, or the dead end of the rope. The rope can be damaged when a bolt is placed on its working end. The bolt itself is designed so as to protect the live end of the rope (Tr. 45, 46, 79).

The manway compartment served as an emergency escapeway. Ten-foot ladders extend from one level to another. Several of the manways were obstructed. One such passage, through a bulkhead, measured only 8 inches by 14 inches. To continue up the manway it would be necessary to crawl out into the open shaft and swing up to the next level (Tr. 46-47).

The Respondent's Case

Chad L. Evans indicated that he was the general manager for the company at the time of this accident.

Evans, who was present during the MSHA inspection, also conducted his own investigation (Tr. 87-89). The witness submitted a drawing of the shaft (Tr. 90, 91; Ex. R1).

Evans indicated that as the bucket was ascending, Royce Green was standing under the utility area and his son was under the manway area. The miner was killed when he bent over to pick up a shovel.

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The area between the skip and the sidewalls was probably less than two feet on each side. However, he also indicated the lateral distance from the skip to the sidewalls varied from 26 inches to four feet (Tr. 94, 96).

MSHA told the company they could use the skip again. In addition, three previous inspections in 1982 and 1983 failed to show a violation of the regulations contested here (Tr. 99; Ex. R2, R3, R4).

Evans had instructed his miners never to go into a skip compartment without overhead protection (Tr. 120). Evans' mining experience indicated a need for a bulkhead before the fatality (Tr. 124, 125). He had been advised that a bulkhead was in place. The placement of a skip over the miners constituted such a bulkhead (Tr. 124, 125).

In rebuttal Inspector Beason testified that Evans indicated that he had not known that a bulkhead was necessary (Tr. 130, 136). In addition, the hoist reports and daily logs indicated that 20 buckets were moved on the day shift. This evidence contradicted Evans' testimony that three buckets were moved each shift (Tr. 133). The number of buckets indicated to the inspector that the two miners were working when the skip was moving (Tr. 126, 133).

Discussion

We will consider the citations in numerical sequence.

Citation 2008144

This citation requires that the ground be taken down or adequately supported before any other work is done. The operator failed to comply with this regulation. The inspector described in detail the loose ground he both observed and sounded in the shaft. Respondent's manager confirmed this evidence when he testified that forty percent of the loose was removed in abating the violative condition (Tr. 100).

Citation 2008144 should be affirmed.

Citation 2008145

The evidence relating to the installation of a substantial bulkhead indicates there was no such bulkhead. The operator's management confirmed this condition. The miners at the time were deepening the shaft. These work conditions made the standard directly applicable.

Citation 2008145 should be affirmed.

Citation 2008146

In connection with this citation the inspector detailed his findings concerning the U-bolts. He further expressed his opinion that the operator violated the regulation.

Respondent offered no contrary evidence.

Citation 2008146 should be affirmed.

Citation 2008147

The record indicates that the ladderways were obstructed. One such ladderway only measured 8 inches by 14 inches. These facts establish a violation of the regulation. The operator offered no contrary evidence.

However, 57.11Å37 by its very terms applies to ladderways constructed after November 15, 1979. There is no evidence in this case indicating when this ladderway was constructed.

Such evidence is necessary in order to sustain a violation of the regulation.

Civil Penalties

The statutory mandate for assessing civil penalties is contained in 30 U.S.C. 820(i). It provides as follows:

(i) The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

The Secretary proposed the following penalties:

Citation 2008144 (loose ground)	\$4,000
Citation 2008145 (bulkhead)	2,000
Citation 2008146 (U-bolts)	20
Citation 2008147 (ladderways)	20

The record indicates the operator had no previous violations (Tr. 85; Ex. R2, R3, R4, R5). The operator should be considered as small in view of its income as well as the number of its employees. The negligence of the operator is apparent inasmuch as the violative

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conditions were all open and obvious. The only evidence of the operator's financial condition bearing on its effect to continue in business is that the company's gross income was under \$10,000. In the absence of any facts to the contrary I find that the payment of penalties will not cause respondent to discontinue its business. Buffalo Mining Co., 2 IBMA 226 (1973) and Associated Drilling, Inc., 3 IBMA 164 (1974). The loose ground and the lack of a bulkhead directly contributed to the death of the miner, hence the gravity is apparent and exceedingly high. In support of its good faith the operator argued that it has always attempted to provide a conscientious and well-maintained [safety] effort (Tr. 145, 146). The evidence fails to establish the operator's claim. However, the company established its statutory good faith by abating the violative conditions in this case.

On balance, I believe the penalties as set forth in the order of this decision are appropriate.

Conclusions of Law

Based on the entire record and the factual findings made in the narrative portion of this decision, I enter the following conclusions of law:

1. The Commission has jurisdiction to decide this case.
2. Respondent violated 30 C.F.R. 57.322, 57.19110 and 57.1924(b).
3. The Secretary failed to prove a violation of 30 C.F.R. 57.1137.

ORDER

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

1. Citation 2008144 is affirmed and a penalty of \$2,000 is assessed.
2. Citation 2008145 is affirmed and a penalty of \$2,000 is assessed.
3. Citation 2008146 is affirmed and a penalty of \$20 is assessed.
4. Citation 2008147 and all penalties therefor are vacated.
5. Respondent is ordered to pay to the Secretary the sum of \$4,020 within 40 days of the date of this decision.

John J. Morris
Administrative Law Judge

FOOTNOTE START HERE

1 A foot wall is at the bottom of an angle; a hanging wall is overhead (Tr. 17).