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BETHENERGY MINES V. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

BETHENERGY MINES, INC.,  
CONTESTANT

CONTEST PROCEEDINGS

v.

Docket No. PENN 87-200-R  
Citation No. 2940495; 7/27/87

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

Docket No. PENN 87-201-R  
Citation No. 2940496; 7/27/87

CIVIL PENALTY PROCEEDINGS

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

Docket No. PENN 87-94  
A.C. No. 36-00958-03662

v.

Docket No. PENN 88-38  
A.C. No. 36-00958-03702

BETHENERGY MINES, INC.,  
RESPONDENT

Livingston Portal 84 Complex

DECISION

Appearances: R. Henry Moore, Esq., Buchanan Ingersoll Professional Corporation, Pittsburgh, Pennsylvania, for Contestant/Respondent; Judith L. Horowitz, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Respondent/Petitioner.

Before: Judge Maurer

Statement of the Case

These consolidated proceedings concern proposals for assessments of civil penalties filed by the Secretary of Labor (Secretary) against BethEnergy Mines, Inc., (BethEnergy) pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the "Act"), seeking a total civil penalty assessment of \$2,500 for three alleged violations of the mandatory safety standard found at 30 C.F.R. 75.1704.

BethEnergy contested the civil penalty proposals and also filed separate notices of contest pursuant to section 105(d) of the Act challenging the validity of the two section 104(a) citations that were later modified to section 104(d)(2) orders and back again to section 104(a) citations (Citation Nos. 2940495 and 2940496 issued on July 27, 1987).

Pursuant to notice, these cases were heard in Pittsburgh, Pennsylvania, on June 24<sup>th</sup> and October 28, 1987. Additionally, on November 13, 1987, in order to supplement the record, the Secretary took the deposition of Inspector Lloyd Smith.

The parties have filed post-hearing proposed findings and conclusions as well as briefs in these matters which I have considered in the course of this decision.

#### Stipulations

The following general stipulations apply to this entire consolidated case:

1. The Livingston Portal of the Mine 84 Complex is owned and operated by BethEnergy Mines, Inc.

2. The Administrative Law Judge has jurisdiction over these proceedings, and both BethEnergy Mines, Inc., and the Mine 84 Complex are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.

3. The operator employs approximately 470 employees at the Mine 84 Complex. The annual production at Mine 84 Complex is approximately 1.2 million tons and the operator's annual production is approximately 5.25 million tons.

4. The authenticity of the exhibits offered at the hearing is stipulated, but no stipulation is made as to the facts asserted in such exhibits.

5. The computer printout may be admitted into evidence as a business record showing the operator's history of violations.

6. The imposition of the penalty proposed by the Secretary of Labor will not affect the respondent's ability to continue in business. Respondent does not stipulate the appropriateness of the imposition of any penalty or the validity of the procedures which resulted in the penalty proposed.

#### General Issues

The issues presented in Dockets PENN 87<sup>th</sup>200<sup>th</sup> and PENN 87<sup>th</sup>201<sup>th</sup> are whether the conditions or practices cited by the inspector constitute violations of 30 C.F.R. 75.1704 and whether or not the violations were "significant and substantial." If the fact of violation is established in each of the above dockets, PENN 88<sup>th</sup>38 concerns the appropriate civil penalties to be imposed for each of the above violations, should any be found, after taking into account the requirements contained in section 110(i) of the Act.

Docket No. PENN 87Ä94 concerns yet a third allegation of a violation of the same mandatory standard and whether the same was "significant and substantial" and "unwarrantable" as well as an appropriate civil penalty for violation, should one be found.

Applicable Statutory and Regulatory Provisions

The cited standard, 30 C.F.R. 75.1704, which is also codified as 317(f)(1) of the Act, provides as follows:

Except as provided in 75.1705 and 75.1706, at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of surface fires, fumes, smoke, and floodwater. Escape facilities approved by the Secretary or his authorized representative, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

"Working section" is defined in the Act and regulations at 30 U.S.C. 878(g)(3) and 30 C.F.R. 75.2(g)(3), respectively, as follows:

"Working section" means all areas of the coal mine from the loading point of the section to and including the working faces.

"Working face" is defined in the Act and regulations at 30 U.S.C. 878(g)(1) and 30 C.F.R. 75.2(g)(1) as follows:

"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.

This docket concerns Section 104(d)(2) Order No. 2686234, issued by MSHA Inspector Lloyd D. Smith at 12:10 p.m. on October 7, 1986. He cited a violation of the mandatory safety standard at 30 C.F.R. 75.1704, and the condition or practice is described as follows on the face of the order:

The intake air escapeway No. 3 entry of the 1 Right 4 Butt Section was not being maintained to ensure passage at all times of any person in that a means was not provided to cross over the 2 overcasts installed at the 2 right belt entry and track entry and the distance from the mine floor to the top of the overcast measured 7 feet in height.

Inspector Smith found that the violation was "significant and substantial" and that the negligence by the mine operator was "high."

Additional stipulations are relevant specifically to the subject order and were agreed to by the parties as follows:

1. The principal issue to be decided in this matter pertains to the existence of a violation of the cited standard, 30 C.F.R.

75.1704, and whether such standard was applicable to the fact and circumstances present in 1 Right on October 7, 1986. Whether a violation existed depends on the resolution of the issue on whether 1 Right was a "working section," as defined by the Act and the mandatory standard.

2. The subject order, modifications thereto, and termination were properly served upon the mine by a duly-authorized representative of the Secretary of Labor upon agents of the respondent at the dates and times, places, stated therein, and may be admitted into evidence for the purpose of establishing their issuance and not for the truthfulness or relevance of any statements asserted therein.

3. At the time the order was issued, no clean intervening inspection of the mine had taken place since the issuance of the citation which initiated the section 104(d) sequence.

4. Two overcasts were located in the mine passageway which would have served as an escapeway if 1 Right were a working section. The top of each overcast would have had to be climbed in order to continue traveling along the passageway.

MSHA's position is that the 1 Right 4 Butt section was a working section on October 7, 1986, and that 30 C.F.R. 75.1704 is therefore applicable.

Production of coal had been halted in this section since December of 1985 because of an encounter with a gas well and was not resumed until after October 7, 1986--sometime in December of 1986. After the mining equipment from this section had been moved to the 2 Right section in early 1986, two overcasts were built over the track and belt in the entry that had previously been the escapeway for 1 Right section when it was actively being mined. These overcasts were approximately seven (7) feet high and the operator concedes that it would have made it more difficult to travel the entry that had previously been the escapeway.

In the four or five weeks prior to October 7, 1986, BethEnergy was working to prepare the 1 Right section to produce coal again. As of October 7, 1986, much of the mining equipment necessary to begin production of coal had been assembled in the section. A continuous miner, a roof bolter, shuttle car, belt conveyor and load center were present in the section on that day. The respondent points out, however, that not all the necessary equipment was there and operating or even operable. The load center was inoperable because of some undiagnosed problem and there was no bin or hopper at the end of the belt for the shuttle car to unload coal onto the belt. Furthermore, permissibility checks had to be done on the assembled equipment, ventilation had to be adjusted, rockdusting had to be done, waterlines established along the belt, etc.

One of the additional requirements goes to the crux of the violation herein--escapeways had to be established. BethEnergy's position is that since it was not intended that coal be mined that day and because coal production had previously ceased in December of 1985, the 1 Right section was not a "working section" on October 7, 1986, and would not be again until production was re-commenced. So, the argument goes that since the standard only requires escapeways be established from working sections there couldn't have been a violation here on that date because the requirement had not yet arisen. A condition precedent, i.e., the existence of a "working section" was not present. BethEnergy simply had not yet had time to establish the escapeway as they would have in the normal turn of events prior to re-commencing production in the 1 Right section.

On October 7, 1986, a crew headed by Mr. Stephen Mahlberg, was assigned to the 1 Right section, with instructions to "prepare the section to load coal." On that same day, Inspector Smith inspected the intake escapeway for 1 Right and found that there were two metal overcasts obstructing the intake escapeway. He thereupon issued the instant order that cited the respondent for a violation of 30 C.F.R. 75.1704.

Mr. John DeMichier, at the time the manager for the Johnstown, Pennsylvania, subdistrict and now the manager for District 9, testified that once the operator has the components necessary for mining assembled in a section, it becomes a working section. Conversely, he also stated that it is not a working section until you have all of the equipment there for mining coal, and that includes having a load center to power the equipment as well as a means to transport the coal out of the section. Inspector Smith testified in a similar vein. Counsel for the Secretary contends in her brief that the agency's official policy is somewhat more expansive than Mr. DeMichier's understanding of it. According to her, MSHA's national policy is that a section is a working section when there is work preparing the section for production or disassembling a section even if all the components of mining are not present in the section.

At the second hearing in October 1987, concerning the consolidated companion cases, but the same basic legal issue, the definition of "working section" was again the main subject. Inspector William Brown testified on this point, disagreeing with Mr. DeMichier's testimony given at the earlier hearing. Inspector Brown opined that a working section came into being at such time as the "first event" took place that set the section up to mine coal, as long as you have a loading point. Once the "first event" takes place and you have a discharge point available, you have a "working section," even if it is months or even years before you actually remove any coal. District Manager Huntley agreed that whenever you do the first, however minor, task associated with mining coal in an area, an escapeway is required.

As set out earlier in the text of this decision, the definition of "working section" as applied to these cases, heavily depends in turn on the definitions of such terms as "working face," "mining cycle" and "loading point." Here again, there is widespread disagreement amongst the witnesses regarding the meaning of this terminology.

Everyone except Mr. Huntley agrees, however, that an escapeway is not required for a work area which is not contained in the space between the working section's loading point and the working faces. That tracks the verbatim language of the Act. BethEnergy takes the position that the terms "working faces" and "loading point" contained in the definition of "working section" indicate that coal production must have commenced and be ongoing in order for an area of the mine to properly be delineated a "working section." A working section does not exist until production begins.

The statutory definition of "working face" refers to, but does not define, the term "mining cycle." Nor is "mining cycle" defined in the Dictionary of Mining, Mineral and Related Terms (1968) published by the Department of the Interior. The word "cycle" is, however. In the coal mining context, it is defined as "the complete sequence of face operations required to get coal." This definition is similar to that offered by Mr. Mucho, the mine superintendent, who characterized the mining cycle as being supporting the roof, extracting the coal, and transporting it out of the mine. Mr. DeMichier's interpretation of the term essentially agreed with Mucho's. The following exchange took place at Tr. 113-114:

By Mr. Moore:

Q. Now, "mining cycle," what is your understanding of what a mining cycle is?

A. It generally consists of cutting, mining or loading the coal on a continuous miner, transporting the coal from the face from the continuous miner by means of a shuttle car or a mobile bridge conveyor and then supporting the newly-exposed roof with a roof bolt.

Q. From what you said, the mining cycle is the cycle that occurs at the faces where the coal is being extracted in terms of cutting cycles, the loading of the roof support cycle, and the transportation cycle; is that correct?

A. Correct.

Q. So, that is a ongoing process that occurs at the face where the coal is being extracted?

A. On an active producing working section.

Q. So, a mining cycle is what occurs on an active producing section?

A. Yes.

Other witnesses appearing on behalf of the Secretary espoused a much broader interpretation. Inspector Brown was asked for his definition at Tr. 382-383.

By Mr. Moore:

Q. What would be your definition of "mining cycle"?

A. You said the word right there, "cycle." "A cycle is a periodic repeated sequence of events,



regularly repeated, or a single complete execution of a periodic repeated phenomenon."

Q. What would you be reading from?

A. That comes from the dictionary of what a cycle is.

Q. Which dictionary would that be?

A. Webster's.

Q. Let's talk somewhat more specifically in terms of underground coal mining. In a continuous mining section, would you describe what a mining cycle is?

A. A mining cycle is cutting coal, loading coal, transporting coal, roof bolting, erecting stoppings, moving up the belt, maintenance work, establish the ventilation.

Q. And, on a longwall section, what is a mining cycle?

A. Put in the pan line, putting the shields on sections, stage loader, tail gate, belt.

Q. So, you're saying that a mining cycle goes far beyond the cutting of coal, the loading of coal, the transporting of coal from the mine and supporting of the roof?

A. Correct.

Mr. Turyn, an MSHA safety and health specialist, essentially agreed with Brown. Mr. Huntley went even further. As far as he is concerned, everything that happens in a coal mine is part of the mining cycle.

I conclude that the "mining cycle" referred to in the definition of "working face" is that definition given by Mucho and DeMichier, as urged by respondent. However, I also agree with Mr. DeMichier that the fact of actual production of coal at any given point in time is not the determining factor in deciding whether there is a "working face" or for that matter a "working section." Furthermore, I agree wholeheartedly with the Solicitor that the definition of "working section" must not depend on divining the operator's intention to mine coal and I reject the notion put forward by BethEnergy that actual coal extraction need have commenced or re-commenced as the case may be.

Nevertheless, in order to have a working section, you must have a working face and that term is closely related to actual or at least imminent coal production at the face, i.e., roof bolting, cutting, loading and/or transporting coal out of the mine. The indisputable facts of this case are that no coal was produced in this section for one year between December of 1985 and December of 1986. Therefore, I find that on the date in question, October 7, 1986, there was no actual, imminent or even contemplated production of coal on the 1 Right 4 Butt section. In hindsight, it was two months later before any production was to take place.

The Secretary cites me to two cases, Windsor Power Coal Co. v. Secretary, 2 FMSHRC 671 (1980), an ALJ decision by Judge Melick; and Mid-Continent Coal and Coke Co. v. Secretary, 3 FMSHRC 2502 (1981), for the proposition that you can have a "working face" without the operator actually engaged in the act of extracting coal at the time the citation is issued. However, both of those cases involved temporary delays or halts in production that were found not to affect the ventilation requirements. Those two situations are factually unlike our case wherein we are faced with a year-long interruption of the mining cycle in that particular section.

The Secretary also cites Sewell Coal Co. v. FMSHRC, 686 F.2d 1066 (4th Cir.1982) wherein a violation of 30 C.F.R. 75.1704 was affirmed in a mine that had been struck, and therefore no coal had been produced for some months before the citation was written. That case does not give me much guidance either, however, because that operator apparently did not raise the issues that have been raised herein, nor did the Commission or the Court of Appeals address themselves to any of the issues raised in this case by BethEnergy. Rather, that case went off on the issue of an impossibility of compliance defense that the operator did raise, and which was rejected.

In my opinion, a reasonable interpretation of the facts in this record would go so far as to establish that as of October 7, 1986, BethEnergy had most of the equipment necessary to mine coal assembled in the section, they were working on the section on an intermittent basis to prepare it for mining again, and within two months, they would complete these tasks and resume mining in December of 1986 after a one-year hiatus.

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It is axiomatic that escapeways need only be maintained from working sections. By definition, a "working section" in the context of 30 C.F.R. 75.1704 must have a loading point (Footnote 1) and at least one working face.

I find as a matter of law that the 1 Right section as of October 7, 1986, did not have a working face and therefore was not a working section. It follows, therefore, that I conclude and find that the Secretary has failed to prove a violation of the cited standard. Accordingly, the order in question will be vacated.

Docket No. PENN 87Ä200ÄR

This docket concerns Section 104(a) Citation No. 2940495, which has had a checkered career. It began as a section 104(a) citation issued by MSHA Inspector William R. Brown at 9:30 a.m. on July 27, 1987. Later that same evening, Inspector Joseph F. Reid modified the citation to a section 104(d)(2) order and changed the negligence finding from "moderate" to "high." On October 23, 1987, the then order was again modified back to a section 104(a) citation with the negligence finding changed back to "moderate" from "high." It cites a violation of the mandatory safety standard at 30 C.F.R. 75.1704, and the condition or practice is described as follows on the face of the citation:

The designated intake escapeway provided for the 53 Parallel section was not maintained to insure passage at all times of any person, including disabled persons. Persons were required to work in the 53 Parallel section.

Additional stipulations specifically relevant to this citation and Citation No. 2940496 were agreed to by the parties as follows:

1. The subject citations, modifications thereto, and terminations were properly served by a duly authorized representative of the Secretary of Labor upon agents of BethEnergy as to dates, times and places stated therein and may be admitted into evidence for the purpose of establishing their issuance and not for the truthfulness or relevancy of any statement asserted therein.

2. At the time the citations were modified to orders to include allegations of unwarrantable failure to comply, no clean intervening inspection of the mine had taken place since the issuance of the citations upon which they were based.

The Secretary alleges that the 53 Parallel section was a working section for the purposes of 30 C.F.R. 75.1704 on July 27, 1987.

On July 27, 1987, the mine was at the end of a month-long idle period when no coal was being produced, but men were at work in the mine doing maintenance and construction work. In the 53 Parallel area, the bottom was being graded in order to shorten travel time to the portal. Three miners were working on the grading job, operating a continuous miner and a shuttle car removing non-combustible material from the bottom and transporting it to gob rooms in the vicinity of the work. Additionally, two masons were working nearby on some overcasts.

Before I turn to the legal analysis of the status of 53 Parallel, there is a substantial factual issue whether the construction site in the 53 Parallel area was within the physical confines of a working section regardless of whether the 53 Parallel section was a "working section" or not.

A "working section" for any area of the mine, by definition, only exists between the "working face" and the "loading point." Conversely, if the area in question is not between the working face and the loading point, it is not within the working section and escapeways are not required for that area.

Inspector Brown identified the working face of 53 Parallel on the mine map, which was marked and received as Joint Exhibit No. 1. The working face he identified are the faces in what the operator calls A Left. This is because the 53 Parallel section had previously been mined up the straight, however, mining had ceased at these faces, stoppings were installed and they had become part of the return airway for A Left. Then the operator had begun mining at right angles to the straight and began calling this the A Left section. However, as the Secretary points out, the same section map was used for both 53 Parallel and A Left sections. In my opinion, it is not important which label we put on them, it is only important that we know from where the "working section," if there is one, begins. So, whether it be 53 Parallel or A Left, Inspector Brown marked Joint Exhibit No. 1 with a blue line labelled "Face WF" to indicate the working face. Inspector Brown considered this to be a working face because coal had been mined there previously and coal would be extracted from there again.

Inspector Brown also observed a disconnected feeder breaker at a point which he placed on Joint Exhibit No. 1 at "LP." He testified that it was this feeder breaker, just outby the grade job that was the loading point for the 53 Parallel section or the A Left faces, depending on which nomenclature you use. If this is correct, the grade job or construction site is clearly between the working faces and the loading point and would be within the physical area described as a "working section" if one legally existed.

However, the operator protests that the inspector is mixing apples and oranges in that the actual loading point (feeder breaker) for the A Left faces is at a point "M" on Joint Exhibit No. 1. Point "M" as opposed to point "LP" is clearly inby the grade job. The feeder breaker which was placed at point "LP" by Inspector Brown was not in fact a loading point for the A Left faces, but rather had previously been used when the former faces of the 53 Parallel section were being mined up the straight. The inspector used the existing face areas from A Left and the loading point from the old 53 Parallel section to make up a "working section" that conveniently enough included within it the construction job at issue.

Additionally, the inspector's placing of the feeder breaker at point "LP" is also contested. His testimony concerning the location of this equipment was contradicted by the mine superintendent, shift foreman and construction crew foreman. They place that feeder breaker at point "P" on the joint exhibit. However, I don't believe it is particularly relevant where that feeder breaker was located since it is not alleged that it was used by the A Left or 53 Parallel section, whatever you wish to call it, for the A Left faces.

Any "working section" that would exist in this area, by whatever name, must necessarily begin at the A Left faces, because there are no other working faces in the area. I find as a fact that the A Left faces were working faces and were located several crosscuts inby where Inspector Brown placed them on the mine map, as indicated by the thick black marker line on Joint Exhibit No. 1. There was also a loading point that was used for removing coal from the faces of A Left during production. That was a feeder breaker located at point "M" on the joint exhibit. I also find that the other feeder breaker, located at point "LP" or "P" on the map was not a loading point for coal coming from the A Left working faces and hence its exact position is irrelevant to the inquiry.

Therefore, I conclude that the five persons working in the area of the grade job were not located in an area that could be termed a "working section" that existed between the

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working faces of A Left or 53 Parallel or A Left off 53 Parallel and its loading point. Escapeways for the grade job work area were therefore not required. Accordingly, Citation No. 2940495 will be vacated.

Docket No. PENN 87Ä201ÄR

This docket concerns Section 104(a) Citation No. 2940496, which like Citation No. 2940495, was originally issued as a section 104(a) citation, was modified to a section 104(d)(2) order and back again to a section 104(a) citation. It was issued by Inspector William R. Brown at 10:30 a.m. on July 27, 1987. He cited a violation of the mandatory safety standard at 30 C.F.R. 75.1704, and the condition or practice is described as follows on the face of the citation:

The designated intake escapeway provided for the 3 Right Longwall Section was not maintained to insure passage at all times of any person, including disabled persons. Persons were required to work in the 3 Right Longwall section.

On July 27, 1987, in the 3 Right area of the mine, a longwall retreat section was being prepared for mining. Although mining did not actually commence in that section until August 3rd or 4th, it is the Secretary's position that the 3 Right section was a "working section" on the day the citation was written, July 27.

The incident giving rise to this citation (as well as Citation No. 2940495) on that particular day was the discovery of a fall at the No. 74 stopping in the 53 Mains area in what was marked as an intake escapeway. It is undisputed that there was no way around the fall. Therefore, the issue once again becomes whether an escapeway is required for the 3 Right section, i.e., is it a "working section." The operator believed that no working section existed in 3 Right because all the equipment necessary for mining was not yet present in the section and also they contend that no loading point existed at that point in time.

On July 27, there were six men working on the section. They were in the process of moving the longwall, setting up the shields which provide support for the roof after the longwall begins to retreat. At this point in time, about one-half of the shields were installed. The pan line was established. There was a conveyor belt installed into the section, but not yet connected to any of the longwall mining equipment. Several components of the stageloader which places the coal onto the belt for transport out of the section were not yet

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present. The head gate drive was still at the operator's Wilson shop and the shearer was located at the operator's Livingston shop at this time. Within approximately one week from this date, all these components and pieces would be brought together and coal production would commence on this section. Everyone agrees that at that juncture, the section becomes a "working section" and there is a requirement for an unobstructed intake escapeway from the working section. The harder question and the one presented for decision herein is whether 3 Right was a "working section" on July 27, 1987, one week prior to the commencement of production.

MSHA, for its part, does not rely on the relatively short time proximity of the single week that we have involved herein. For example, Inspector Brown testified that the 4C panel, which can be located on the joint exhibit, where the operator had not at that time even started to move longwall equipment in, was already a "working section." Apparently, the basis for this opinion is his understanding that any work done with a view toward producing coal creates a "working section" and gives rise to the escapeway requirement. Messrs. Huntley and Turyn agree with this notion, whereas Mr. DeMichier and Inspector Smith do not. DeMichier and Smith believe that a working section comes into existence prior to the production of coal but after assembling all of the equipment necessary for mining in the section.

The operator stands by its position that active coal production must have commenced for a working face, and, therefore, by definition, a working section to exist, but argues that even by the DeMichier/Smith interpretation, no working section existed in the 3 Right section on July 27, 1987.

Consistent with my opinion in Docket No. PENN 87Ä94, supra, I reject the Brown/Turyn/Huntley "first event" interpretation and the operator's "actual production" interpretation of the pertinent statutory and regulatory language.

As I stated earlier in this decision, in order to have a working section you must have a working face and that term implies at least imminent capability of coal production from that face. The DeMichier/Smith interpretation is closest to the mark in this regard in that using their test, the operator must at least have the equipment assembled that it needs to produce coal. The Secretary concedes that was not the case on the 3 Right section.

I therefore find that the 3 Right section was not a "working section" on July 27, 1987. Since escapeways need only be maintained from working sections, it follows that I

