

CCASE:  
SOL (MSHA) V. C.W. MINING  
DDATE:  
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1244 SPEER BOULEVARD #280  
DENVER, CO 80204-3582  
(303) 844-5266/FAX (303) 844-5268

June 24, 1993

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) : Docket No. WEST 92-204  
Petitioner : A.C. No. 42-01697-03637  
 :  
v. : Bear Canyon No. 1  
 :  
C.W. MINING COMPANY :  
Respondent :

DECISION

Appearances: Robert J. Murphy, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Carl E. Kingston, Esq., Salt Lake City, Utah,  
for Respondent.

Before: Judge Cetti

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (1988) ("Mine Act" or "Act"). The Secretary of Labor issued a citation to C.W. Mining Company (C.W. Mining) alleging a violation of 30 C.F.R. 75.220(a)(1) (1991) (Footnote 1) for operating a mine without an approved roof control plan.

It is C.W. Mining's contention that there was no violation of 30 C.F.R. 75.220(a)(1), that the mine's old roof control plan was improperly revoked, that MSHA did not negotiate in good faith, that the mine's old roof control plan was adequate, more suitable and a safer roof control plan than the new current plan, that the current roof control plan was submitted by the operator to the MSHA district manager for approval under protest and for these reasons the citation charging the operator for operating the mine without an approved roof control plan should be vacated.

1 30 C.F.R. 75.220(a)(1) (1991), provides as follows:

Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.

SYNOPSIS

With the safety of the miners, my evaluation of the evidence and the established applicable law in mind, I find on careful review of the record that within the framework of the evidence presented, MSHA has carried its burden of proof on the critical central issues in this case and conclude the violation of 30 C.F.R. 75.220(a)(1) was established.

STIPULATIONS

At the hearing the parties entered into the following stipulations, which I accept.

1. C.W. Mining Company is engaged in mining and selling of bituminous coal in the United States and its mining operations affect interstate commerce.

2. C.W. Mining Company is the owner and operator of Bear Canyon No. 1 Mine, MSHA I.D. No. 42-01697 an underground coal mine.

3. C.W. Mining Company is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. ("the Act").

4. The Administrative Law Judge has jurisdiction in this matter.

5. The subject citations and orders were properly served by duly authorized representatives of the Secretary upon agents of C.W. Mining Company on the dates 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 statements asserted therein.

6. The exhibits to be offered by C.W. Mining Company and the Secretary are stipulated to be authentic but no stipulation is made as to their relevance or the truth of the matters asserted therein.

7. The proposed penalty will not affect C.W. Mining Company's ability to continue business.

8. C.W. Mining Company is a medium size mine operator with 551,084 tons of production in 1990.

9. The certified copy of the MSHA Assessed Violations History accurately reflects the history of this mine for the two years prior to the date of the citation.

C.W. Mining is the owner and operator of the Bear Canyon No. 1 Mine (Footnote 2) in Huntington, Utah. The Bear Canyon Mine is an under-ground coal mine required by the Mine Act to operate under an approved roof control plan. At all times prior to October 23, 1991, the date the citation in question was issued, C.W. Mining operated the Bear Canyon Mine under a roof control plan approved by the Secretary of Labor. In June 1991, when its roof control plan came up for its six-month review as provided by 30 C.F.R. 75.223(d), (Footnote 3) MSHA proposed certain revisions of the plan that C.W. Mining found unacceptable. The parties communicated for several months particularly with respect to the two primary differences in the old plan and the new current plan. The two primary differences between the old plan and the new or current approved roof control plan are (1) the distance that the miners can mine before permanent roof bolts are installed and (2) the manner and sequence of the steps taken in pulling (extracting) pillars.

Under the old plan the operator was allowed to advance 120 feet where adequate top coal was available to provide temporary roof support between 120 foot bolting cycles. Only where adverse roof conditions were encountered or where insufficient top coal existed, was the operator required by the old plan to roof bolt every 20 feet and not allow miners in by the last row of roof bolts.

Under the new current plan, top coal irrespective of its thickness and strength cannot be used as temporary roof support and Respondent must be on a 20 foot bolting cycle at all times, regardless of the condition or the amount of the top coal. With respect to extracting pillars under the old plan, roof bolting the splits was not required when adequate top coal was available for support. Under the current plan, all pillar splits are required to be roof bolted, regardless of good or bad roof conditions and the required fender cut sequence is different than the sequence under the old plan. (Tr. 54, 88-89, 531, 601-602, 604).

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2 This mine is also referred to by its former name the "Coop Mine" in the exhibits and the transcript of testimony.

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3 30 C.F.R. 75.223(d) provides:

(d) The roof control plan for each mine shall be reviewed every six months by an authorized representative of the Secretary. This review shall take into consideration any falls of the roof, face and ribs and the adequacy of the support systems used at the time.

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Under the new current plan miners always work under a fully bolted roof. This follows from the fact that C.W. Mining under the current plan is limited to 20 foot cuts with a 20 foot roof bolting cycle. It is undisputed that 20 feet is the maximum distance Respondents' continuous miners is able to travel under remote control.

## II

### BRIEF PROCEDURAL AND FACTUAL HISTORY OF NEGOTIATIONS LEADING TO APPROVAL OF CURRENT ROOF CONTROL PLAN

In 1988 the regulations concerning roof support in 30 C.F.R., subpart C were revised. Section 30 C.F.R. 75.220(f) as revised mandated that existing roof control plans that conflict with the revised regulations meet the requirements of the revised roof regulations by September 28, 1988. C.W. Mining's president, superintendent and engineering consultant met with District 9 roof control specialist in early January 1989 and the roof control plan was reviewed and revised. This old plan was approved by the district manager on January 26, 1989. Thereafter, the roof control plan was reviewed by MSHA every six months and on each review was found to be adequate until August 9, 1991, when MSHA informed the operator that the roof control plan was inadequate. (Tr. 522-524). This is the same plan that was later rescinded by MSHA on October 23, 1991. The citation in question was issued the same day the plan was revoked when mining operations continued without an approved roof control plan. MSHA gave the operator several extensions to abate the citation to permit uninterrupted production until the citation was abated on November 4, 1991.

Abatement was accomplished by C.W. Mining submitting under protest the current plan which was approved November 4, 1991 by the MSHA district manager.

The sequence of the Bishop type negotiations in this case for a suitable roof control plan can be summarized as follows:

June 29, 1991, C.W. Mining sent to the MSHA District 9 Manager for the six months review its 22 page roof control plan for Bear Canyon #1 Mine last approved March 5, 1990. In the letter transmitting the plan C.W. Mining stated that it did not feel any changes were needed at that time. (Govt. Ex. 2).

August 9, 1991, MSHA sent a five page letter to C.W. Mining stating that on review by MSHA personnel the plan was found to be inadequate. The letter listed 30 "necessary" changes in the pillar section of the roof control plan and 10 "necessary" changes in the development section of the roof control plan. (Govt. Ex. 3). MSHA requested C.W. Mining to submit a new plan

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by August 26, 1991 addressing the 40 concerns MSHA set forth in the letter.

August 22, 1991, C.W. Mining sent a letter to MSHA stating that the roof control systems set forth in the plan submitted for review had been used at the mine for 30 years and there had been no uncontrolled roof falls during that time. C.W. Mining once again asked that the submitted plan be approved with no change. The letter did not otherwise respond to the 40 concerns MSHA listed in its letter of August 9, 1991.

September 9, 1991, MSHA sent a second letter to MSHA (Govt. Ex. 6) requesting that C.W. Mining respond to and comply with MSHA's letter of August 9, 1991. This letter also informed C.W. Mining that if an acceptable plan was not received by the due date, September 30, 1991, that the plan may be rescinded and that any further mining activity would result in the issuance of a citation charging a violation of 30 C.F.R. 75.220.

It is the Secretary's contention that as of September 9, 1991, all the requirements of the Bishop decision were fulfilled. MSHA nevertheless agreed to extend the deadline so that a face-to-face discussion could be held with C.W. Mining concerning the reasons that the roof control plan had to be revised. The due date was extended to September 24, 1991.

On September 24, 1991, a face-to-face meeting of mine management and MSHA was held in Price, Utah. Present at the meeting in Price included the following:

- Bill Stoddard - President of C.W. Mining
- Ken Defa - Superintendent of Bear Canyon No. 1 Mine
- Jerry Taylor - MSHA District Engineering Coordinator (Acting District Manager)
- William Ponceroff - MSHA District Roof Control Supervisor
- Tony Gabossi - MSHA Acting Subdistrict Manager
- Bill Ledford - MSHA Field Office Supervisor

At the meeting the need for full roof bolting was discussed in detail as well as other requested changes addressed in MSHA's second disapproval letter dated September 9, 1991.

On October 4, 1991, the district manager sent a follow-up letter to C.W. Mining recapping the discussion and agreement reached at the September 24, 1991, face-to-face meeting. The letter concludes as follows:

During a phone conversation with William Ponceroff, District Roof Control Supervisor, on September 30, 1991, Mr. Bill Stoddard,

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President, C.W. Mining Co., agreed to submit an acceptable plan within two weeks. It is agreeable to extend the deadline for the submittal of an acceptable roof control plan to October 11, 1991.

As discussed in the meeting held on September 24, 1991, deadlines for ending the review process have been extended too many times. C.W. Mining Co. must make the necessary revisions and submit an acceptable roof control plan by October 11, 1991, or the currently approved roof control plan will be rescinded. Any further mining activities without an approved plan would be a violation of 30 CFR 75.220.

Be advised that the requirements for the Bishop decision and Program Policy Letter No. P89-V3 (copy attached) have been fulfilled. C.W. Mining Co. must have an acceptable roof control plan ready for submittal in order to prevent loss of production. The company may then contest the provisions of the roof control plan on the basis of a technical citation.

If you have any questions, please contact this office at (303) 231-5462.

Sincerely,

/s/ William A. Holgate

October 12, 1991, C.W. Mining submitted a "new revised" roof control plan (Govt. Ex. 12) which MSHA found unacceptable and rejected.

October 22, 1991, MSHA faxed to C.W. Mining 16 reasons why it found the "new revised" roof control plan unacceptable. (Govt. Ex. 13). The hard copy of the same date, October 22, 1991, in addition to specifying the reason the plan was unacceptable again recapped the history of negotiation and concluded as follows:

This requested revision is necessary to formulate a plan suitable to the present conditions and mining systems at the mine, and to ensure the health and safety of the miners when future mining occurs. Since all negotiations concerning the development of an acceptable roof control plan, in accordance

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with 30 CFR 75.220, remain at an impasse, the currently approved roof control plan is rescinded. Any further mining activities without an approved plan is a violation of 30 CFR 75.220.

If you have any questions, please contact this office at (303) 231-5462.

On October 23, 1991, the date that the old roof plan was revoked and the citation issued for violation of 30 C.F.R.

75.220, C.W. Mining submitted another revised roof control plan that was similar to the current approved plan. In its transmitted letter, C.W. Mining stated as follows:

Under protest we do agree to the enclosed plan as dictated by your office. We still believe the original roof control plan is just as safe, and in pillar extraction your system is less safe because it puts our people in the pillar splits where they are exposed to sloughing ribs and possible injury while bolting. It also forces us to extract more than one pillar at a time and will cause the pillars to load up and be more apt to cause out bursts.

We also feel more comfortable with the pillar extraction sequence we have used for over 30 yrs. with no serious accidents or injuries (sic) related to roof problems. We found it works better and has proven to be safer than other systems we have tried, including the system Mr. Ponceroff is forcing us to use.

In rebuttal to the C.W. Mining claim that MSHA dictated the new plan, counsel for the Secretary points to Mr. Ponceroff's testimony at the hearing as follows:

We did not dictate this plan. We approve plans, we don't say what goes in them. As long as they comply with statutory provisions and good mining principle as determined by the district and the representative of techs and the mining industry as a whole in relation to site specific instances in that mine, we approve them. [TR 95]

On October 29, 1991, the Mine Superintendent, Ken Defa, after a telephone conversation with Mr. Ponceroff, MSHA Supervisory Roof Control Specialist, sent MSHA revised plans concern-



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ing the pillar extraction sequence that Mr. Ponceroff had requested. (Govt. Ex. 16).

October 30, 1991, the District Manager sent the mine operator, Mr. Stoddard, six detailed specific reasons the submitted roof control plan remained unacceptable. In response to the District Manager's letter, C.W. Mining that same day (October 30, 1991), faxed the six revisions to the plan that were specifically requested by the District Manager. (Govt. Ex. 19).

November 4, 1991, the MSHA District Manager approved the revised C.W. Mining roof control plan.

November 25, 1991, the District Manager corrected an inadvertent error on page 15 of the approved plan and reissued a new copy of the entire approved plan consisting of 18 pages. The approved plan included the disputed 20 foot roof bolting cycle and the new disputed pillar extraction procedure and fender cut sequence. (Govt. Ex. 35-A).

### III

#### DISCUSSION AND FINDINGS

Preliminarily it should be noted that in *Dole*, 870 F.2d 662 at 667 the court stated "[t]he specific contents of any individual mine [roof control] plan are determined through consultation between the mine operator and the [MSHA] district manager." In *Peabody Cole Company*, 15 FMSHRC 389 (March 1993) the Commission held that "both the Secretary and the operator are required to enter into good faith discussions and consultation over mine plans." The Commission in *Peabody*, supra, further explained this process and quoted their decision in *Carlson County*, 7 FMSHRC 137 as follows:

The requirement that the Secretary approve an operator's mine ventilation plan does not mean that an operator has no option but to acquiesce to the Secretary's desires regarding the contents of the plan. Legitimate disagreements as to the proper course of action are bound to occur. In attempting to resolve such differences, the Secretary and an operator must negotiate in good faith and for a reasonable period concerning a disputed provision. Where such good faith negotiation has taken place, and the operator and the Secretary remain at odds over a plan provision, review of the dispute may be obtained by the operator's refusal to adopt the disputed provision, thus triggering litigation

before the Commission. 7 FMSHRC at 1371  
(citation omitted)(emphasis added).

Section 302(a) of the Mine Act mandates each operator to carry out on a continuing basis a program to improve the roof control system of each mine as follows:

Sec. 302. (a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this title. The plan shall show the type of support and spacing approved by the Secretary. (Emphasis added).

30 U.S.C. 862(a)

Upon review of the exhibits referenced above, the testimony of the witnesses and the records as a whole I find that both the operator and the Secretary negotiated in good faith and for a reasonable period of time over their legitimate differences. Nevertheless, the parties were unable to resolve their differences. Consequently, in order to continue production after revocation of the old plan the operator under protest submitted the revised current approved plan.

Although the operator and the Secretary in an attempt to resolve their legitimate differences negotiated in good faith and for a reasonable period of time, they remained at odds. In Dole supra the Court of Appeals at page 669 footnote 10 (Footnote 4) states that

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4 Dole supra at footnote 10. We note that while the mine operator had a role to play in developing plan contents, MSHA always retained final responsibility for deciding what had to be included in the plan. In 1977 Congress "caution[ed] that while the operator proposes a plan and is entitled, as are the miners and representatives of miners, to further consultation with the Secretary over revisions, the Secretary must independently exercise his judgment with respect to the content of such plans in connection with his final approval of the plan." S. Rep. No. 95-181, 95th Cong., 1st Sess. 25 (1977),

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while the mine operator had a role to play in developing plan contents, MSHA always retained final responsibility for deciding what had to be included in the plan.

#### IV

##### MSHA'S REASONS FOR REVOCATION OF OLD PLAN

The reasons why the MSHA District Manager revoked the old roof control plan are summarized by MSHA in its Post-Hearing Brief, page 6 and 7, as follows:

The roof control plan was revoked for several reasons:

1. Under the old plan, men were allowed to work and travel under unsupported roof. Mining experience has shown that traveling under unsupported roof is the most hazardous conduct in mining. Roof falls are the largest cause of fatalities in underground mines today. Statistics show that persons are killed by going under unsupported roof. [TR 34-37; 126-127].
2. Under the old plan, C.W. Mining was only required to bolt when it believed that it was necessary, yet it is too difficult to know when it might be necessary to fully bolt. The transitional areas between good roof and bad roof can only be determined under the old plan by human judgment. Offset in the roof observed by Mr. Ponceroff indicates that the company was not successful in determining when the conditions were bad. They must be aware of the conditions, before someone goes under them, not after. The only way to avoid that is to fully bolt. [TR 40-44; 83-84].
3. Transitional areas between good roof and bad roof can only be determined under the old plan, by human judgment and the violation history at this mine shows that numerous citations and orders existed for failure to follow the roof control plan. Also preshift, and on shift violations were issued for failure to properly examine the mine roof, and an imminent danger order for a bad roof has been issued at this mine, further indi-

U.S.Code Cong.&Admin. News 1977, p.3425.

cating the unwillingness of the operator to keep the roof in good condition.

4. The operator maintained that 1 to 3 feet of top coal was the primary roof support at this mine. However, roof bolts were being installed systematically throughout all development sections. Hence the mine has agreed that the roof is bad in many locations.

5. Conditions of the mine observed by inspectors, District 9 specialists and MSHA technical support indicate that it is an extremely unsafe practice for the miners to work under roof that is not supported, since it is uncertain what a miner may encounter. All sections of the roof must be bolted before anyone goes under the roof.

6. History of Violations - roof falls at this mine. (Exhibit Nos. 1 and 4).

7. C.W. Mining had a particularized history of violations of its own Roof Control Plan. (Exhibit 25).

Based upon all of the information provided by the on site inspectors, the visits made by Technology Center experts, the history of this mine and the newly revised roof control regulations, Mr. Ponceroff recommended that changes be made in the old roof control plan. Those changes primarily related to a system of full-bolting. That is a system where the area is bolted before any miner is required to work or travel under the roof. The result of the recommendation was that C.W. Mining would be limited to 20 foot cuts with its continuous miner, since that is the distance that the equipment can travel under remote control. Under the old system, the miner operator could go under the roof in areas just cut, without supporting, and could develop a distance of more than 100 feet. Under the new plan with full bolting, the distance is reduced to 20 feet.

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The Commission has taken note of the fact that mine roofs are inherently dangerous and

that even a good roof can fall without warning. Consolidation Coal Company, 6 FMSHRC 34, 37 (January 1984). It has also stressed the fact that roof falls remain the leading cause of death in underground mines, Eastover Mining Co., 4 FMSHRC 1207, 1211 (July 1982), Halfway Incorporated, 8 FMSHRC 8, 13 (January 1986).

V

Respondent presented considerable evidence to support its contention that its old roof control plan last approved by the District Manager on March 5, 1990, was adequate and appropriate for the particular conditions at the mine and therefore should not have been revoked. Respondent presented the testimony not only of its officials and employees but also the testimony of three federal coal mine inspectors to this effect. These MSHA coal mine inspectors were quite familiar with the particular conditions at the mine. Their testimony supports Respondent's contention that in most areas of the mine top coal was of adequate thickness and strength to be used as temporary roof support for the 120 foot cuts and bolting cycles used under the old plan. Evidence was also presented that a 20 foot full roof bolting cycle was used by C.W. Mining under the old plan when adverse roof conditions were encountered. The mine inspectors called by Respondent also testified that the pillar extraction procedure under the old roof control plan was safe and even safer than the pillar extraction procedure under the current approved roof control plan.

VI

Respondent's expert witness Dr. Krishma Sinha, a geological engineer, based upon the tests he performed and his computer analysis of the results he obtained, testified that there was no added safety benefit in requiring roof bolts to be installed in 20 foot cycles over 120 foot cycles. Dr. Sinha's testimony was not persuasive. He did not take or supervise the taking of samples used in his analysis. He did not know who took the samples or even what part of the mine from where the samples were allegedly taken. (Tr. 993). He took neither tensile nor sheer strength tests. (Tr. 995). He assumed the material to be homogeneous. (Tr. 999). Mr. Ropchan the mining engineer employed by the MSHA Technology Center testified this assumption was a fatal miscalculation. Mr. Ropchan stated that Mr. Sinha's computer analysis failed to consider the joints and fractures of the coal. (Tr. 996-998, 1091).

The Secretary in support of his position presented the testimony of M. Terry Hoch, the mining engineer who heads the Roof Control Division of the MSHA Safety and Health Technology Center

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in Pittsburgh (Tr. 381, Govt. Ex. 27); Jerry Davidson, a geologist employed by the MSHA Safety and Health Technology Center and David Ropchan, a mining engineer for the MSHA Safety and Health Technology Center since 1971. (Tr. 315). All of these experts visited the mine in question and made visual observations of the mine conditions.

David Ropchan testified that the method of pillar extraction used under the old plan was more dangerous than pillar extraction under the current plan since the old plan opened up more ground and thus exposed the miners to more unsupported roof. He stated that stress on the roof increases with the square of the span of the roof and when the roof span increases, tensile stress is greatly increased. (Tr. 1088-1089).

Jerry Davidson, the MSHA geologist, testified he did not consider pillar extraction under the old plan a safe way to extract pillars "because under the old plan a lot of ground (is) opened up" and practically no ground support was installed. Thus under the old plan the continuous miner operator, his helper and the shuttle car operator and possibly the section foreman would be exposed to a greater hazard of roof falls than under the current plan which involves "opening up" less ground.

Mr. Hoch who heads the MSHA Technology Roof Control Division testified that District 9, where the mine in question is located, was the only district that still has a roof control plan that permitted miners to travel under an unsupported coal roof or a roof supported only by head (top) coal. (Tr. 393-394). He explained that a coal roof cannot be a sole means of support because as a material, it is inconsistent, it is jointed, has cleats and, most importantly, can and will fall. (Tr. 448-449).

Mr. Hoch stated that the primary thrust of the 1988 revised roof control regulations was to "incorporate new technologies so that miners would not be required to work or travel in areas where roof was not supported. He stated that head or top coal can "mask" roof problems so you can't see hazards such as joints and fractures. He also stated that coal left on the roof can enhance the resistance to absorption of humidity increasing the dangers of roof falls.

Based on the testimony of the experts from the Safety and Health Technology Center and the undisputed fact that the operator was encountering changing adverse roof conditions in the mine that all parties agree required a 20 foot roof bolting cycle, I find that the new current roof control plan is suitable for the mine in question and is mine specific. It is not necessary or appropriate in this case to reach the question of whether the use of top coal alone to support the roof is proscribed by the present roof control regulations.

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Respondent argues that its witness should be credited since its witnesses were more familiar over a longer period of time with the particular conditions at the mine and spent more time observing the mine in operation rather than MSHA's witnesses who were less familiar with the mine and who spent less time observing and examining the conditions of the mine. The Commission in *Cyprus Tonopah Mining Corp.*, 15 FMSHRC 367 at 372 (March 1993) quotes from its earlier decision *Asarco, Inc.*, 14 FMSHRC 941, at 949 (June 1992) as follows:

The Commission has recognized that:

[e]xpert witnesses testify to offer their scientific opinions on technical matters to the trier of fact. If the opinions of expert witnesses conflict in a proceeding, the judge must determine which opinion to credit, based on such factors as the credentials of the expert and the scientific bases for the expert's opinion.

Based upon their superior credentials I credit the opinion of the Secretary's Safety and Health Technology Center experts. Based upon their testimony and the undisputed fact that there were changing adverse roof conditions in the mine that required full roof bolting on 20 foot cycles, I find that the old roof plan was no longer suitable to the conditions of the mine in question and was properly revoked. On the same basis I also find the current approved roof control plan is suitable to the conditions of the Bear Canyon No. 1 Mine as contemplated by 30 C.F.R. 75.220(a)(1) and section 302(a) of the Mine Act.

Consistent with the above findings and conclusions I find the violation of 30 C.F.R. 75.220(a)(1) as charged in the citation was established. The violation is technical nature. Consequently the \$20 penalty MSHA proposes is appropriate.

ORDER

1. Citation No. 3582718 and the MSHA proposed \$20 penalty are affirmed.

2. Respondent shall pay a civil penalty of \$20 to the Secretary of Labor within 30 days of this decision and upon receipt of payment, this proceeding is dismissed.

August F. Cetti  
Administrative Law Judge

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Distribution:

Robert J. Murphy, Esq., Office of the Solicitor, U. S. Department  
of Labor, 1585 Federal Building, 1961 Stout Street, Denver, CO  
80294 (Certified Mail)

Carl E. Kingston, Esq., 3212 South State Street, P.O. Box 15809,  
Salt Lake City, Utah 84115 (Certified Mail)  
sh