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PEABODY COAL V. SOL (MSHA)
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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PEABODY COAL COMPANY, : CONTEST PROCEEDING
Contestant :
v. : Docket No. KENT 91-179-R
: Citation No. 3419830; 2/11/91
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Martwick Underground Mine
ADMINISTRATION (MSHA), : Mine I.D. No. 15-14074
Respondent :

DECISION

Appearances: David R. Joest, Esq., Peabody Coal Company,
Henderson, Kentucky, for Contestant;
William F. Taylor, Esq., Office of the
Solicitor, U.S. Department of Labor,
Nashville, Tennessee, for Respondent

Before: Judge Melick

This case is before me upon remand by the Commission by orders dated March 25 and April 30, 1993, to determine (1) whether the previously approved ventilation plan for the Peabody Coal Company (Peabody) Martwick Mine is not now suitable to the conditions of that mine and (2) whether the ventilation plan provision now advocated by the Secretary is suitable to the Martwick Mine. In this proceeding the Secretary bears the burden of proof on these issues. See, Secretary v. Peabody Coal Co., 15 FMSHRC 381, 389 (1993); Secretary v. Peabody Coal Co., 15 FMSHRC 628 (1993).

Under the previously approved ventilation plan Peabody was permitted to conduct roof bolting in its deep cut entries without line curtain and without any prescribed minimum ventilating air in the entry. Under the Secretary's proposed modification, as amended at hearings on June 17, 1993, without objection to the amendment itself, Peabody would be required to extend the line curtain into deep cut entries during the roof bolting phase of the mining cycle to within 4 rows of bolts outby the row being installed and would be required to maintain 3,000 cubic feet per minute (cfm) ventilating air at the inby end of the line curtain.

There is no dispute that the Martwick Mine, a medium-sized mine, liberates large volumes of methane and, as a result, is subject to the 15-day spot inspections applicable

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under Section 103(i) of the Act to mines liberating more than 200,000 cubic feet of methane during a 24 hour period. It is further undisputed that methane is liberated from the working units of this mine and recent tests performed by Peabody showed liberation of 11,131 cubic feet of methane per 24 hours from the face of the No. 7 entry of the No. 1 Unit. In addition, the methane concentrations during the testing period on May 27, 1993, reached a maximum of .3 percent. These tests were performed, however, with partial line curtain in place and approximately 648 cubic feet per minute of ventilating air at the end of the line curtain 32 feet from the face.(Footnote 1) The samples were obtained approximately 12 inches from the face and 12 inches from the roof of the No. 7 entry. A similar test performed in the No. 2 Unit No. 6 entry under similar conditions resulted in a similar maximum concentration of .3 percent methane.

Additional tests performed under the direction of Mine Safety and Health Administration (MSHA) Senior Mining Engineer Charles D. Campbell demonstrated, through the use of a tracer gas, the air flow patterns in a typical entry at the Martwick Mine under the previously approved ventilation plan and under the proposed MSHA modification (see Government Exhibit Nos. 5A, 6A and 9A). Campbell is a graduate civil engineer and registered professional mining engineer with significant experience in mine ventilation. He conducted the tracer gas tests at the Martwick Mine along with two other MSHA ventilation specialists, Mark Shultz and Louis Stanley. In summary, under conditions permitted by the preexisting ventilation plan the studies show virtually no air movement within approximately 25 feet of the face (Government Exhibit No. 9A). The studies show that even with a modified deflector curtain (which was not required under the previous plan) there was virtually no air movement within approximately 20 feet of the face. On the other hand, with the changes in the ventilation plan now proposed by MSHA, the ventilating air clearly sweeps the face area.(Footnote 2) It may reasonably be inferred from these tests that, under conditions permitted by the previously approved plan, methane liberated at the face would not be diluted, removed, or rendered harmless,

1 Under the previously approved ventilation plan roof bolting would have been permitted without any line curtain in the entry (See Government Exhibit No. 5A).

2 At hearing the Secretary represented that subsequent to the initial hearings, he has further liberalized his proposed requirements by permitting the line curtain to be extended to within four rows of roof bolts outby the row being installed by the roof bolting machine. Under the original proposal the curtain was required to have been extended to within two rows of bolts outby the row being installed.

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but would be left in an unventilated area to accumulate in increasing concentrations while the roof bolting machine operated in its phase of the mining cycle.

It is undisputed that an electrically operated roof bolting machine, such as used in the Martwick Mine, could provide a source of methane ignition if it were in an impermissible condition, should the drill strike rock and cause sparking or should the roof bolt strike rock or the face plate while being inserted. The extreme potential hazard is, of course, the presence of explosive concentrations of methane with oxygen and an ignition source.

In summary, the evidence shows that the Martwick Mine liberates large volumes of methane, that methane is indeed liberated from face areas particularly in newly cut faces and that such methane could reasonably be expected to be liberated during the roof bolting phase of the mining cycle. Further, it is reasonable to infer from the tests performed by the Secretary that under conditions permitted to exist under the previously approved ventilation plan, little or no methane present in the area 20-to-25 feet outby the face area would be diluted, removed or rendered harmless, that the roof bolting machine would be permitted to operate in the vicinity of such unventilated areas and that the roof bolting machine could at any time become an ignition source.

Under these circumstances wherein the Secretary has objectively identified a measurable safety hazard that is not addressed by the previously approved ventilation plan I find that the Secretary has met her burden of proving that such plan is not now suitable for the Martwick Mine. The Secretary has, I find, also met her burden of proving that his proposed modifications address the above safety hazard by requiring ventilation adequate to dilute, remove and render harmless the subject hazard of methane gas and therefore such modifications are indeed suitable to the Martwick Mine.

While it is not necessary to the decision in this case since Peabody has waived the opportunity to present cost estimates towards a cost-benefit analysis, I note that the Secretary's proposed modifications are essentially without cost or of only minimal cost to Peabody. Under either the previously approved ventilation plan or the proposed modification the brattice curtain must be in place to within 10 feet of the continuous miner during the cutting cycle. Since that curtain would ordinarily remain in place until the next phase of the mining cycle, the roof bolting phase, three to four rows of roof bolts could be inserted before any additional line curtain need be hung. That curtain would, in any event, ordinarily have to be extended again when the continuous miner returns for its next cutting cycle. Thus, in any event, the

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cost of implementing the Secretary's proposed modifications to Peabody's ventilation plan are minimal or nonexistent while the benefit toward the safety of miners is significant.

In any event, I find that the Secretary 's proposed modification to the Martwick Mine ventilation plan is indeed "suitable" to the mine and the previously approved plan is no longer suitable. Citation No. 3419830 is accordingly AFFIRMED and Contest Docket No. KENT 91-179-R is DENIED.

Gary Melick
Administrative Law Judge

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