

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9958 / FAX: 202-434-9949

March 24, 2015

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

v.

A MINING GROUP, LLC,  
Respondent

CIVIL PENALTY PROCEEDING

Docket No. SE 2014-194M  
A.C. No. 08-01340-343320

Mine: Bushy Hammock Quarry

**DECISION AND ORDER**

Appearances: Brooke D. Werner McEckron, Esq., U. S. Department of Labor, Office of the Solicitor, Atlanta, GA for Petitioner

Joshua Conrad, Plant Superintendent, A Mining Group, LLC, Lamont, FL for Respondent

Before: Judge Rae

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d).

This docket involves one citation issued under section 104(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820, (the “Act” or “Mine Act”), for a violation of mandatory standard 30 C.F.R. § 56.4201(a)(2). A hearing was held in Tallahassee, Florida on March 10, 2015 at which time the parties presented evidence and made closing arguments. For the reasons set forth below, I find the violation has been established and I modify the gravity and negligence and assess a penalty of \$100.00.

On January 7, 2014, MSHA inspector John Howerton conducted a regular inspection of the Bushy Hammock limestone mine operated by A Mining Group, LLC (“A Mining”). A Mining employs twenty miners at this location. The mine has five towers, two levels each, on which 7,000 gallons of water are poured over screens where the limestone is washed and sorted and then dropped onto a conveyer belt below. During his inspection, Howerton found that a fire extinguisher on one of the towers had not had its annual inspection completed; it was two months overdue. He issued Citation Number 8732840 under the mandatory standard which requires that all firefighting equipment be inspected at least every twelve months to ensure the mechanical

parts, the amount and condition of extinguishing agent and expellant, and the nose, nozzle and vessel are in effective operating condition.

Howerton assessed the violation as unlikely to cause an injury and of moderate negligence affecting one person. Should an injury occur it would be expected to be permanently disabling. Ex. S-1. The Secretary seeks a penalty of \$285.00.

A Mining has stipulated to the fact that the inspection had not been done.<sup>1</sup> It argues, however, that it had been using the services of an independent contractor for at least the past eight years to perform the annual inspections. Tr. 37. The contractor, it argues, rather than A Mining, should have been cited for the violation. A Mining also argues that this fire extinguisher was not required by the regulations, which Howerton confirmed, and therefore should not have been cited.

The regulation imposes strict liability requiring only that all fire extinguishers in service must be inspected annually, regardless of whether they are required by another regulation. This fire extinguisher was in service and available for use by the miners. The fact that a citation would not have been issued had it not been in place, does not overcome the requirements of the regulation. The Act further imposes liability upon operators for the violations committed by an independent contractor. *See Asarco, Inc.-Northwestern Mining Dep't v. FMSHRC*, 868 F.2d 1195 (10th Cir. 1989). I am therefore compelled to find the citation was properly assessed against A Mining.

The Secretary argues that the gravity of this violation is unlikely to result in an injury-causing event; however, he asserts there was a risk of an electrical motor or grease fire which would cause permanently disabling injuries as a result of the violation. He also asserts the operator's negligence is moderate because both monthly inspections of the fire extinguisher and daily workplace examinations of the towers were required; therefore, despite having a contractor to conduct the annual inspections, the operator should have discovered that the annual inspection had not been performed.

A Mining contests the moderate negligence assessment based upon the fact that the contractor was responsible for inspecting this equipment and they discharged the contractor's services as soon as they learned of this violation. Additionally, they argue that there were multiple factors which made the possibility of a fire virtually nonexistent, which I have considered regarding the gravity of the violation.

Conrad testified that each of the five towers is equipped with two to four fire extinguishers as well as two-inch fire hoses on each deck which also serve as a fire suppression system. Tr. 29. The office, tunnels, and motor control center each have five fire extinguishers in them as do all of the twenty pieces of equipment they operate, including the welding carts and trucks. In all, there are more than 50 fire extinguishers on the property. Tr. 6, 25, 37. When the

---

<sup>1</sup> The parties have also stipulated to the jurisdiction of Mine Act over the mine as well as the jurisdiction of the Federal Mine Safety and Health Review Commission and its judges over this proceeding. They also stipulate to the authenticity of the citation, the size of the operator, and the history of prior violations for penalty purposes. Joint Ex. 1.

mine is in operation, the screens are doused with 7,000 gallons of water to wash the stone, which Howerton agreed would prevent a fire. Tr. 24. The tower is accessed by miners to perform maintenance work such as welding when the washer is not in operation, which Howerton opined would be the most likely cause of a fire. Tr. 24-25. The towers are not only equipped with fire extinguishers but when maintenance welding is done, as Conrad explained, the miners put down a fire blanket to catch any extraneous slag. Tr. 31. There were multiple exit routes from the tower that would not be hindered by the fire hazards identified by Howerton. Tr. 23. Howerton stated that unless a miner was standing at the exact location where a fire broke out, his escape would not be blocked in any way, and would not require the use of a fire extinguisher. Tr. 23-24. As Conrad stated, the purpose of the fire extinguishers is not to enable the miners to stand and fight a fire, it is to provide them with a safe means of escape which was already present. Tr. 44.

The Secretary also raised concern that an electrical fire at the motor or a grease fire would not be extinguishable with water. Conrad's unchallenged testimony was that the motor is located above the tower and it is equipped with overload protection which would trip the breaker to the motor before a fire would occur. Tr. 34. The only grease used on the tower is in a 3/8 inch diameter, 3 inch long hose which was self-contained and would extinguish a fire. Moreover, the grease used is not flammable and has a combustion flash point of approximately 450 degrees while the equipment operates at a substantially lower temperature of 50 to 60 degrees above ambient temperature. Tr. 31-38.

Conrad testified that the annual inspection sticker on the fire extinguisher was turned to face the back wall and it was locked in place. A miner conducting the monthly inspections or a workplace examination would not have had cause to check the annual inspection sticker during the course of his duties. Tr. 34.

Based upon these factors, I find that the gravity of the violation is extremely low. I also find significant mitigating circumstances leading me to the conclusion that the operator did not know and could not have known that its contractor, hired for the specific purpose of conducting the annual fire inspections, had missed inspecting this one extinguisher out of the 50 or more on the property. The condition had existed for only two months and there was no evidence that the extinguisher, although not required, was not in proper working order. A Mining discharged the contractor as a result of this violation and hired another company. The operator has been diligent in its fire prevention efforts. The negligence is very low.


Section 110(i) of the Mine Act delegates to the Commission and its judges the authority to assess all civil penalties provided in the Act. 30 U.S.C. § 820(i). The Act requires that in assessing civil monetary penalties the Commission and its judges shall consider the six statutory penalty criteria: (1) the operator's history of previous violations; (2) the appropriateness of such penalty to the size of the business of the operator charged; (3) whether the operator was negligent; (4) the effect on the operator's ability to continue in business; (5) the gravity of the violation; and (6) the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

I have considered each of the six criteria above. The parties did not stipulate to the size of the operator, the ability to continue in business or the good faith compliance by the operator. A Mining provided testimony regarding the size of its business and I have reviewed the Assessed Violation History Report submitted in the Secretary's Prehearing Report which was not tendered as an exhibit but was not objected to by the Respondent in pretrial proceedings. Absent evidence to the contrary from either party, I assume the penalty I impose will not affect the operator's ability to continue in business and that it demonstrated good faith in abatement of the violation. My gravity and negligence findings are stated above.

Having considered the six criteria and given that I have decreased the level of negligence and gravity of the violation, I find a penalty of \$100.00 to be appropriate.

**ORDER**

It is ORDERED that Citation No. 8732840 be MODIFIED to no negligence. It is further ORDERED that A Mining Group, LLC, pay the Secretary of Labor the sum of \$100.00 within 30 days of the date of this Decision.<sup>2</sup>



Priscilla M. Rae  
Administrative Law Judge

Distribution:

Brooke D. Werner McEckron, Esq., Office of the Solicitor, U.S. Department of Labor, 61 Forsyth Street, S.W., Room 7T10, Atlanta, GA 30303

Joshua Conrad, Plant Superintendent, A Mining Group, LLC, 19080 West US Highway 98, Lamont, FL 32336

---

<sup>2</sup> Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.