

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

AUG 05 2015

SPARTAN MINING COMPANY,
Contestant

v.

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

CONTEST PROCEEDING:

Docket No. WEVA 2015-407-R
Order No. 9020932; 12/30/2014

Mine: Road Fork #51
Mine I.D.: 46-01544

ORDER REQUESTING ADDITIONAL JOINT STIPULATIONS

This case is before me upon a single notice of contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). At issue in this proceeding is the validity of imminent danger Order No. 9020932 issued on December 30, 2014, at Spartan Mining Company's Road Fork No. 51 Mine. The court initially scheduled a hearing for June 9, 2015, on this matter. Shortly after, the parties reached a settlement on Citation No. 9020933, issued in conjunction with the imminent danger order, and requested that the court resolve the remaining issues regarding the imminent danger order on summary decision. The parties mutually agreed to submit stipulations of fact and cross-motions for summary decision, and the court issued an order cancelling the June 9 hearing. In that order, the court reminded the parties "that the matter will only be decided on the motions for summary decision if the parties can agree on a joint stipulation of relevant facts; otherwise, the matter will be rescheduled for a hearing." May 18, 2015, Order Cancelling Hearing, Order Consolidating Dockets, Order to File Motions for Summary Decision and Motion to Approve Settlement. The parties subsequently filed cross-motions for summary decision and joint stipulations of fact followed by a reply brief from each side. Despite the joint stipulations, several relevant and material facts remain unclear to the court.


In order to resolve this matter on summary decision, the court will require additional stipulated facts. In particular, the court requires that the parties agree on the following:

- Under Section 107(a) of the Act, what was "the extent of the area of [the] mine throughout which [a] danger exist[ed]" and how many persons were withdrawn from the area and prohibited from entering?
- Approximately how much time passed in between the inspector making the observations noted in Joint Stipulation 8, removing the continuous miner operator from the danger, and issuing an oral imminent danger order?¹

¹ Joint Stipulation 8 specifically states, "On December 30, 2014, during his inspection of the Road Fork #51 Mine, MSHA Inspector Nicholas Christian observed a continuous mining

- Could the facts of Joint Stipulation 8 have been reasonably expected to cause death or serious physical harm had the inspector not removed the continuous miner operator from the danger?

If the parties are unable to reach stipulations on these questions by August 28, 2015, the court will schedule a limited hearing.


David F. Barbour
Administrative Law Judge

Distribution: (Certified Mail)

K. Brad Oakley, Esq., Jackson Kelly, PLLC, 175 East Main Street, Suite 500, Lexington, KY 40507

Jacob Hargraves, Esq., Office of the Solicitor, U.S. Department of Labor, 1100 Wilson Blvd., 22nd Floor, Arlington, VA 22209

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machine being trammed forward and in reverse in the #1 entry while the continuous miner operator was positioned alongside the continuous mining machine, which is commonly referred to as the “red zone.”

² This order was prepared by Commission Intern Cole Stevens.