

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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August 4, 2010

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. PENN 2009-12
Petitioner	:	A.C. No. 36-09491-162638
v.	:	
	:	
LITTLE BUCK COAL COMPANY,	:	Bottom Split Slope
Respondent	:	

**DECISION**

Appearances: Paul A. Marone, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, on behalf of the Secretary of Labor; Edmund C. Neidlinger, Partner, Little Buck Coal Company, Pine Grove, Pennsylvania, Little Buck Coal Company.

Before: Judge Zielinski

This case is before me on a Petition for Assessment of a Civil Penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The Petition alleges that Little Buck Coal Company is liable for one violation of the Secretary’s Mandatory Safety Standards for Underground Coal Mines. The violation was originally designated as “flagrant.”<sup>1</sup> At the commencement of the hearing, counsel for the Secretary announced the withdrawal of the flagrant designation, and a specially assessed civil penalty in the amount of \$6,624.00 is now proposed for the violation. A hearing was held in Reading, Pennsylvania, and the parties filed briefs following receipt of the transcript. For the reasons set forth below, I find that the Secretary failed to prove by a preponderance of the evidence that Little Buck violated the standard, and vacate the order.

**Findings of Fact - Conclusions of Law**

On March 4, 2008, Gregory Mehalchick, a mining engineer and ventilation and roof control specialist employed by MSHA, conducted an inspection of Little Buck Coal Company’s

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<sup>1</sup> A flagrant violation “means a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.” 30 U.S.C. § 820(b)(2).

Bottom Split Slope Mine, located in Schuylkill County, Pennsylvania. He was accompanied by Thomas Garcia, a supervisory ventilation and roof control specialist. Both men were authorized agents of the Secretary. They generally review ventilation and roof control plans, and consult on related issues. They also periodically conduct inspections of mine facilities. They arrived at the mine around 6:00 a.m., and were accompanied by Ronald Bender, a foreman and limited partner, as he performed his preshift inspection. Mehalchick cited several violations of the Secretary's regulations establishing mandatory safety and health standards for underground coal mines. Only one of the enforcement actions is at issue in this proceeding, Order No. 7010827, charging that Little Buck failed to properly support the roof of the mine. Little Buck timely contested the Order and the assessed civil penalty.

#### Order No.7010827

Order No. 7010827 alleges a violation of 30 C.F.R. § 75.202(a), which requires that the "roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts."

The violation was described in the "Condition and Practice" section of the Order as follows:<sup>2</sup>

A slant was developed off the 6 1/2 chute approximately thirty feet above the gangway level. This slant was approximately fifteen feet deep. No roof control was installed in this slant, that being wooden props. Hitches for these props were not evident in the floor. The slant was also observed to be free of loose, broken coal. The normal mining cycle for this mine is to drill holes in the coal face, load the holes with explosives, caps and stemming, and then detonate the explosives to break approximately 7 1/2 feet of coal for removal. As the developed depth was approximately fifteen feet, all above factors indicate that miners were directed by the operator and his foreman to work under unsupported roof.

The operator and his foreman engaged in aggravated conduct constituting more than ordinary negligence by allowing this to occur. This violation is an unwarrantable failure to comply with a mandatory standard.

Ex. G-1.

Mehalchick determined that it was reasonably likely that the violation would result in a fatal injury, that the violation was significant and substantial, that one person was affected, and that the operator had acted with reckless disregard. As noted above, a specially assessed civil penalty in the amount of \$6,624.00 has been proposed for this violation.

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<sup>2</sup> Grammar and spelling errors have been corrected in quotations from documents prepared in the field.

## The Violation

Little Buck's Bottom Slope Mine extracts anthracite coal by blasting off the solid, and is configured like a typical anthracite mine. The lowest horizontal level of the mine, the "gangway" heading, is 10 feet wide, and serves as the primary entry and the intake slope, as well as the level at which coal is loaded out of the mine. The "monkey" heading runs parallel to the gangway, approximately 30 feet above it in the coal seam. The gangway and monkey are connected by 12-foot wide "chutes," at 30-foot intervals.<sup>3</sup> Developments above the monkey heading, essentially extensions of the chutes, are referred to as "breasts," and are permitted to be 20 feet wide. Anthracite coal seams typically run close to vertical, e.g., 70 degrees from horizontal. The Bottom Slope Mine is somewhat unusual, in that the slope of the coal vein is only about 20 degrees from horizontal.

The mine's approved roof control plan requires the installation of timbers, or props, and lagging to support the mine roof and upper ribs.<sup>4</sup> Ex. G-5. Typically, two props are required every 5 feet in the gangway, and one row of props, on five-foot centers, is required in the monkey. Props in the monkey heading are required to be made of untreated hardwood, with a minimum diameter of five inches. Ex. G-5 at 8. Because of the slope of the coal seam, the high-side rib of the monkey and gangway headings are considered part of the roof. For that reason, the props in those headings are installed at the high-side ribs, and lagging or lining is required along the surface of the ribs. Ex. G-5 at 7-8.

Little Buck's normal mining cycle involved the drilling of holes approximately seven feet deep into the coal face. Seven holes were drilled in the four-by-six-foot face, four on the lower side and three on the upper side. The holes were then loaded with explosives, caps and stemming, and the explosives were detonated to break the coal for removal. Typically 7 and 1/2 feet of coal would be extracted in each cycle. In the monkey heading, the broken coal would then be washed out into the chute and down to the gangway with a high pressure water hose. Explosives were generally detonated toward the end of the work day and, after the mine atmosphere cleared, the broken coal would be washed out. Props and lagging would be installed at the beginning of the next work day. Tr. 165-66.

Mehalchick and Garcia were inspecting the area of the 6-1/2 chute and its extension, the breast directly above the monkey heading. At that location the monkey headings on each side of the chute were being developed at upward angles. The left side monkey heading had been developed and appropriately supported with props and lagging. The right side monkey heading had been advanced a significant distance, but no roof support had been installed, and there was

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<sup>3</sup> The chutes were numbered in whole and half-numbers, e.g., #5, #5-1/2, #6, #6-1/2, etc.

<sup>4</sup> Underground coal mine operators are required to "develop and follow a roof control plan, approved by the [MSHA] District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine." 30 C.F.R. § 75.220(a)(1).

no evidence that any temporary supports had been placed in the heading while it was being mined. The floor of the heading was clean and damp, from the washing out of the coal the evening before. Tr. 43, 139. Garcia used a tape and measured along the low-side rib. The distance from the edge of the chute to the face was 15 feet. That was the only measurement taken during the inspection. In response to a discovery request, Little Buck reported that the high-side rib measured 8.5 feet from the edge of the breast to the face, and that the face was six feet wide and four feet high.

About two weeks before the hearing, Mehalchick prepared a diagram of the area, using a computer program, "AutoCAD." Tr. 55-61; Ex. G-3. A copy of the diagram, an overview of the area of the six-1/2 chute and monkey heading, at a right angle to the coal seam, is attached as an appendix to this Decision. The diagram is not an exact depiction of the area, because the only dimensions used were the measurement on the low rib and Respondent's report of the length of the high rib and the width and height of the monkey heading. Mehalchick used the roof control plan's maximum allowable figures for the widths of the chute and breast, and assumed that the various elements were arranged symmetrically along a straight centerline. Tr. 54-60, 111. He also assumed that the transition from the 12-foot width of the chute to the 20-foot width of the breast occurred on "some kind of slant." Tr. 92-93, 111. When he entered the measurement from the low rib and the other dimensions into the computer program "everything tied in," that is, "all the dimensions fit," and the diagram was generated. Tr. 57-58, 111. The diagram also conformed with his recollection of his observations of the scene some two years earlier. Tr. 58, 111.

Mehalchick's and Garcia's concern was that Bender had worked under unsupported roof when he mined the second 7.5-foot cut in the heading. As shown on the diagram, the Secretary contends that the roof was not supported in a 2.3-foot wide trapezoidal area along the low-side rib, labeled "area under unsupported roof," and that Bender would have been in that area when he drilled and loaded the three holes closest to the low-side rib for the last cut. Ex. G-3.

While the Order was not written as a violation of the approved roof control plan, it is useful to consider the plan when considering whether the roof was adequately supported or otherwise controlled. Unfortunately, the roof control plan does not specifically address the situation where a monkey heading is developed at an upward angle, at the point where the allowable 12-foot width of the chute changes to the allowable 20-foot width of the breast. Also unspecified is where the first prop on the high-side rib of the monkey must be placed, i.e., at the corner, five feet inby, or somewhere in between. Mehalchick was unaware of any interpretations of the roof control plan requirements, or general roof support requirements, for headings developed at an angle. Tr. 115.

When Mehalchick and Garcia made their inspection the entire depth of the cut was open and clear, and there was no roof support of any kind. There is little question that the roof of the right-side monkey heading was not adequately supported at that time. However, no miners had traveled or worked in that area after the second cut had been blasted. Bender had washed the

coal out of the heading with a high pressure hose while he was situated in the breast.<sup>5</sup> Tr. 167. Under Little Buck's established mining cycle, props and lagging would have been installed in the heading at the start of that morning's shift.

As noted above, the violation is alleged to have occurred on the previous shift, when the holes for the last cut were being drilled and prepared for blasting. At that time the high-side rib had been advanced only about one foot, and no props would have been required under the roof control plan. Nevertheless, Mehalchick and Garcia believed that the area within 2.3 feet of the low-side rib was not adequately supported, and that Bender had worked in that area. They believed that temporary roof support should have been installed while the holes were being drilled and prepared for blasting. Tr. 113, 158. Bender undoubtedly worked in the subject area when he drilled and prepared the three holes nearest the low-side rib. However, it is not at all clear that the roof in the area was not adequately supported.

Most significantly, the relative strength of the coal block, as compared to a single 5-inch diameter wooden prop, strongly suggests that the subject area should not have been considered unsupported. Mehalchick and Garcia agreed that the only action necessary to support the roof of the monkey, as they observed it, was the installation of one prop on the high-side rib within five feet of the breast.<sup>6</sup> Tr. 89-91, 156-58. Consistent with the approved roof control plan, that single prop would have rendered safe for travel the entire area of the monkey heading up to the 15-foot deep face, including the area in the diagram labeled "area under unsupported roof." Of course, at the time of the alleged violation, when the holes for the second cut were being drilled and prepared, there was no prop in that area. The last 7.5 feet of coal, shown as a cross-hatched area in the drawing and labeled "coal removed from single pull," was still in place, and the high-side rib was only one foot long.

However, if it is assumed for purposes of analysis, that at the time of the violation the monkey heading was considered to be as Mehalchick and Garcia observed it, i.e., 15 feet deep on the low-side rib, then rather than the single five-inch diameter wooden prop that they agree would have provided adequate support, the roof was supported over an area of 45 square feet by hard anthracite coal. I find it inconceivable that a single 5-inch diameter wooden prop could have provided more roof support than the solid block of coal that was in place at the time of the alleged violation. If it would have been safe to work and travel in the "area under unsupported

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<sup>5</sup> Bender had demonstrated how the coal was washed out to Mehalchick and Garcia, who agreed that it could have been done from a safe area. Tr. 102, 141.

<sup>6</sup> Garcia testified that had one prop been installed five feet from the breast on the monkey's high-side rib, the roof of the monkey would have been adequately supported, and there would have been no violation. Tr. 157-58. In fact, two props were installed to terminate the order, most likely one five feet from the intersection of the high-side rib and the breast, and one at the intersection to support lagging between the props. Tr. 91.

roof,” and a further 7.5 feet in by, with one wooden prop on the high-side rib, it surely would have been safe to work and travel in the subject area with the coal in place.

In addition, the Secretary’s theory does not account for support provided by props that were installed in the chute and breast. While there was some disagreement on the location of props, the inspectors and Bender agreed that a prop had been installed close to the corner of the chute and the low rib, as depicted in the drawing. Tr. 59, 145, 174. The alleged unsupported area extends nearly to that prop. It appears, from the diagram, that other props are considered to have supported roof as much as five feet away, but that the prop on the lower corner of the trapezoid provided no support in the subject area. When questioned on that issue, Mehalchick stated that the prop provided support in the chute, but “nothing significant” in the monkey. Tr. 112. However, he later agreed that the prop “may” provide “a little” support in subject area. Tr. 122. Another concern is that, under the roof control plan, the 20-foot wide breast is supported by three rows of props at five-foot spacings, one down the center and one five feet from each rib. As depicted in the drawing, the row of props closest to the right rib of the breast was intact all the way down to the low-side rib of the monkey. It seems that those props may have provided adequate support in the breast up to the extension of the breast’s right rib line down to the low-side rib of the monkey. A dotted line has been added to the drawing showing the extension of the rib line. If so, the area considered unsupported would have been reduced by more than fifty percent, and would have extended only about two feet from the face where the subject holes were drilled. Bender may not have been that close to the face when he drilled and prepared the holes.

It may be that the placing of temporary support while the holes were being drilled and prepared would have been prudent, or even necessary to adequately support the mine roof. While I am reluctant to reject the opinions of experienced inspectors, I find no acceptable explanation for the apparent inconsistency between what would have been acceptable roof support under the approved plan, and the conditions at the time of the alleged violation. Upon consideration of the above, I find that the Secretary has failed to prove by a preponderance of the evidence that Little buck violated the standard as alleged. Accordingly, the Order will be vacated.

**ORDER**

Order No. 7010827 is **VACATED**.

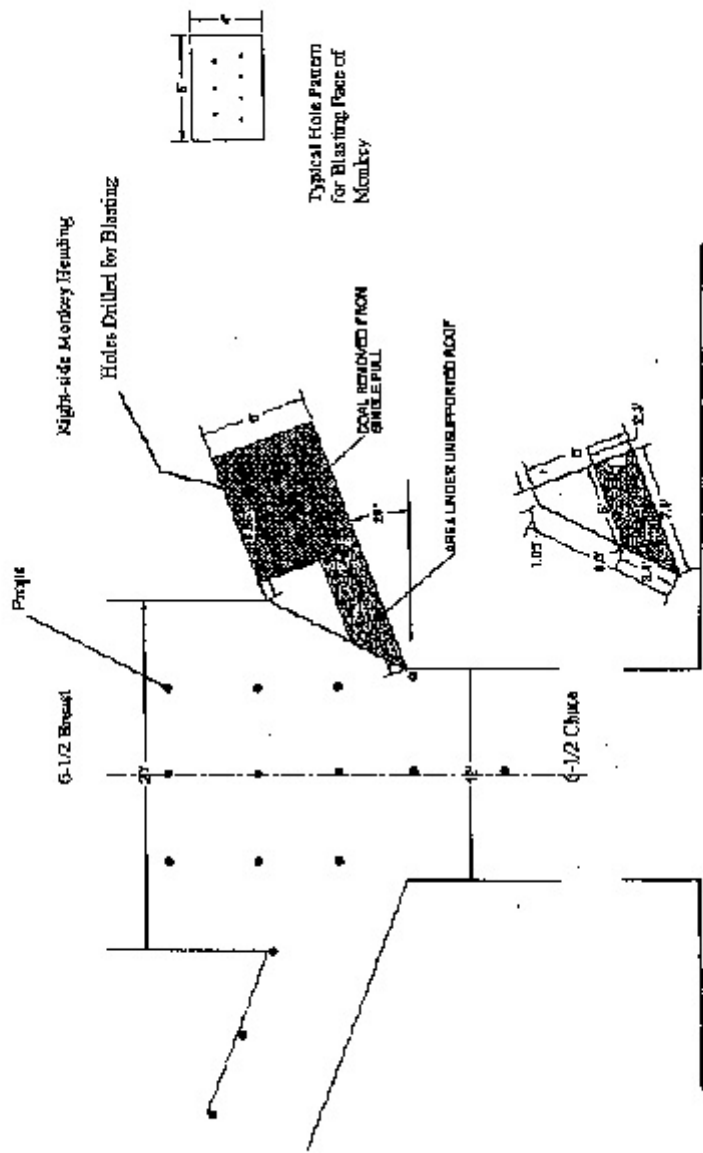
Michael E. Zielinski  
Senior Administrative Law Judge

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**BOTTOM SPLIT SLOPE MINE**  
 Overview - at Right Angle to Coal Seam



APPENDIX I PENN 2009-12  
 Government Exhibit G-3