

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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May 28, 2002

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 2001-428
Petitioner : A. C. No. 15-17587-03582
v. :
OHIO COUNTY COAL COMPANY, :
Respondent : Freedom Mine

DECISION

Appearances: J. Phillip Giannikas, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, on behalf of Petitioner; R. Henry Moore, Esq., Buchanan Ingersoll, Professional Corporation, Pittsburgh, Pennsylvania, on behalf of Respondent.

Before: Judge Melick

This case is before me upon a Petition for 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. § 801 (1994), et seq., the "Act," charging the Ohio County Coal Company (Ohio County) with one violation of the mandatory standard at 30 C.F.R. § 75.1700 and proposing a civil penalty of \$2,000.00, for that violation. The general issue before me is whether Ohio County violated the cited standard as alleged and, if so, what is the appropriate civil penalty to be assessed considering the criteria under Section 110(i) of the Act.

Citation No. 7646849, as first issued on November 21, 2000, alleged a "significant and substantial" violation of the standard at 30 C.F.R. § 75.1700 and charged that "MMU OO1 located in the first south main has intersected two unlocated wells on the active unit located approximately at spad 33+00, in entries 2 and 8 respectively." The citation was twice modified on November 28, 2000, to increase the negligence allegations from "moderate" to "high" and to charge an "unwarrantable failure" violation under Section 104(d)(1) of the Act.¹ The Secretary

1 Section 104(d)(1) provides as follows:

"If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger,

alleges that the modifications were made “because the wells that were intersected by the #1 unit were found in other sources of information readily available and not utilized by the operator.”

The citation was terminated on November 28, 2000. The termination notice states as follows:

Information has been sent from the operator which shows that five wells have now been found and located in the “3C” panel and that two more wells have approximate locations in the said panel and are not located. The information further shows that another six wells are within the 500 feet [*sic*] barrier of the “3C” panel and are not located. A well was also shown to have an approximate location in the “4C” panel.

The cited standard, 30 C.F.R. § 75.1700, as relevant hereto, provides that “each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coal beds or any underground area of a coal mine.” At hearings, counsel for the Secretary stated that the only violations actually charged relate to those wells found on November 20 and 21, 2000, and as initially cited on November 21, 2000. Counsel explained that the additional wells mentioned in the November 28, 2000, termination notice were cited, not as additional charges, but only as purported violative conditions evidencing high negligence and “unwarrantable failure.”

The conditions alleged in the initial citation are undisputed. On the morning of November 20th, 2000, an oil well casing was struck by the continuous miner in the No. 8 entry, two feet off of the right rib at crosscut 33+00. The continuous miner also broke a coupling off of the well casing. This incident was reported to the Mine Safety and Health Administration (MSHA) that same morning. MSHA Inspector Archie Coburn, proceeded to the mine later that morning and observed that the well casing had been cut, resulting in a five inch gap. Crude oil, water and mud were emitted from the broken casing. Coburn checked the mine ventilation map in the mine office (Gov’t Exh. 4) and observed that this oil well had not been plotted on the

such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.”

map. Mine Superintendent Ricky Brown also told Coburn that he had called Associated Engineers (Associated), an independent contractor who had prepared the map, and was told that the oil well had not been plotted on their maps either. Coburn observed that no methane was being emitted from the well and the oil and water had stopped flowing. Coburn issued a “Section 103(k)” order to ensure the safety of mine personnel and terminated the order later on the same date after the well had been sealed off with a wrap-around coupling. At that time Coburn concluded that, since the well had not been identified on any map, it must have been a “wildcat” well. No evidence of any well was found on the surface above the casing discovered underground.

Coburn testified that he later learned that, on November 21, 2000, at around 9:10 a.m., the miner had cut into another oil well this time in the No. 2 entry, 62 feet in by the last open crosscut. This well was not cased. He learned that the miner had automatically deenergized when it cut into the well indicating the presence of at least 2% methane. Oil and water were also emitted from this well but the methane was diluted and removed by mine ventilation. The well was plugged off and the mine resumed production. This well had also not been plotted on the required ventilation plan map (Gov’t Exh. 4).

MSHA Inspector Charles Jones testified that he was present at the scene shortly after the second well was discovered on November 21. When he arrived he detected small amounts of methane on his hand held monitor. According to Jones, methane continued to be emitted from the well until it was plugged. Jones found the ventilation to be appropriate and that no methane was found at the face.

MSHA Mining Engineer Robert Simms was directed to investigate the matter after the second unplotted oil well was discovered. He too verified that the then-current mine ventilation map (Gov’t Exh. 4) failed to identify the position of the two wells at issue. According to Simms, there are three sources of information for determining the location of oil wells in the vicinity of the subject mine: (1) Kentucky Geological Service maps from oil well permits, (2) Kellar Maps prepared by a commercial enterprise, and (3) Scout-Check maps also prepared by a commercial enterprise. According to Simms, mine superintendent Ricky Brown told him that he had called Associated President, David Lamb, who told Brown that the two wells at issue were in fact plotted on the Kellar map. Simms did not however testify as to when this conversation occurred. Simms apparently also confirmed on his own that the two wells were in fact plotted on a Kellar map. Simms thereafter issued the modifications on November 28th, to the citation he had issued on November 21st.

Simms testified that he told “them” on November 21, to research all the oil wells in the areas to be mined. A map subsequently produced by Associated on November 25, 2000, which Simms received on November 27, 2000, showed a number of additional wells that had not been plotted on the approved map utilized by Ohio County (Gov’t Exh. 4). The new map showed not only the two wells at issue but nine additional wells. Simms testified that he modified the November 21 citation, increasing the degree of negligence and adding unwarrantability findings, based on this newly discovered evidence.

The critical issue in this case is whether Ohio County had taken “reasonable measures” within the meaning the cited standard to have located the cited oil wells. In this regard it is undisputed that Ohio County had engaged the services of the engineering firm, Associated, to provide accurate mine ventilation maps required by the Secretary. Such maps are required by law to show, *inter alia*, the location of oil wells within projected mining areas. According to Associated president, David Lamb, they have been in the business of providing such engineering services to most of the mining companies in the Illinois basin since 1958. Hundreds of mining companies have used their services. According to Lamb, who has a bachelor’s degree in civil engineering from the University of Kentucky and is a licensed professional engineer, Associated utilizes a number of informational sources to develop a database of oil wells. Because of inadequacies in each source they use all the sources to cross-check and confirm the location of wells. They utilize the Kentucky Geologic Survey, the Kentucky Division of Oil and Gas, “Kellar Maps,” maps developed by scouts for oil companies and individual private records. None of the sources are absolutely reliable however and, especially in the area of the Freedom Mine, there is always a possibility of unmapped (wildcat) wells. There is no evidence that Associated had previously provided any faulty information regarding the location of oil wells. In addition, according to Ohio County Mine Superintendent Ricky Brown, they had been relying upon Associated’s well mapping services since they had begun mining the Freedom Mine in 1993 and had, to his knowledge, never previously mined into any unlocated oil wells.

According to Ohio County Mining Engineer Kenneth Moore, in November 2000, mining activities at the Freedom Mine were premised on the most recently MSHA approved mine map which had been prepared by Associated on March 17, 2000, (Gov’t Exh. 4). This map had been generated by Associated from a computer disk containing digitalized information in hundreds of “layers.” The system is known as computer assisted drafting or “CAD”. Moore testified that he had used the same computer disk to prepare an updated map which was later submitted to the Secretary.

As it was later learned, after the two wells at issue herein were mined into, the Associated engineer who prepared the March 17, 2000, map (Gov’t Exh. 4) failed to discover a “frozen layer” of digitalized information on the CAD which contained information relating to the cited wells. Accordingly the printed map (Gov’t Exh. 4) relied upon by Ohio County failed to identify the two wells cited herein (as well as the additional wells cited in the November 28 termination notice).

Within this framework of evidence, however, I conclude that Ohio County had taken “reasonable measures” to locate the wells at issue. It had contracted with a long established engineering firm with whom they had a long standing relationship and which had never previously failed to locate an oil well in areas mined by Ohio County. It may reasonably be inferred that the firm was reputable in that it had been relied upon since 1958 to provide such services for most of the mining companies in the region.

In reaching these conclusions I have not disregarded the Secretary’s contention that, after

the discovery of the first unplotted well on November 20, and of previous oil seepage, Ohio County should have been on heightened alert for any mapped or unmapped wells. It is undisputed, however, that the previously discovered seepage was not associated with any oil well and that the well discovered on November 20, was thought by everyone, including the MSHA inspector and an Associated engineer to have been an unmapped “wildcat” well. It was only after further investigation by Associated after the discovery of the second unmapped well on November 21, that the “frozen layer” on the CAD computer disk was discovered by an Associated engineer. However, I find that in any event, reliance by Ohio County upon a reputable engineering firm under the circumstances herein constitutes “reasonable measures” to locate oil wells within the meaning of the cited standard. Accordingly there is no violation as charged and the citation herein must be vacated.

ORDER

Citation No. 7646849 is hereby vacated.

Gary Melick
Administrative Law Judge

Distribution: (By Certified Mail)

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