

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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July 26, 2001

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. SE 2000-245-M  
Petitioner : A.C. No. 01-00851-04087  
v. :  
 : Oak Grove Mine  
U.S. STEEL MINING COMPANY, LLC, :  
Respondent :

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**DECISION**

Appearances: Terry G. Gaither, Conference and Litigation Representative, U. S. Department of Labor, Birmingham, Alabama, on behalf of Petitioner;  
S. Andrew Scharfenberg, Esq., Ford & Harrison, LLP, Birmingham, Alabama on behalf of Respondent.

Before: Judge Zielinski

This case is before me on a Petition for Assessment of Civil Penalty filed by the Secretary of Labor against U.S. Steel Mining Co., LLC, pursuant to section 105 of the Federal Mine Safety and Health Act of 1977 (the "Act"). 30 U.S.C. § 815. The petition alleges a single violation of the Secretary's mandatory health and safety standards and proposes a civil penalty of \$242.00. A hearing was held in Hoover, Alabama on June 15, 2001. For the reasons set forth below, I vacate the citation and dismiss the petition.

*Findings of Fact*

On June 5, 2000, Jacky H. Shubert, an inspector for the Secretary's Mine Safety and Health Administration (MSHA), conducted an inspection of U.S. Steel's Oak Grove Mine. He was accompanied by James Bell, an elected union safety representative. Shubert issued Citation No. 7667878 for what he perceived to be a violation of 30 C.F.R. § 75.220(a)(1), which requires that operators comply with their approved roof control plans. He described the alleged violation as follows:

The current roof control plan is not being complied with, in that the cribs in the tail gate entry of the long wall were not installed properly [--] none of the cribs were capped tightly against the roof.

Respondent's roof control plan, which had been approved by MSHA, included the following provisions for roof control relative to the longwall mining operation:

Hydraulic jacks, timbers, or cribs shall be installed on a maximum spacing of 5' centers on the operator side of the head gate entry for a distance of 30' from the face in the direction of the longwall advance. Tail gate support shall consist of a minimum of one row of cribs positioned at maximum intervals of 7' between cribs. "Can-type" cribs may be installed in lieu of conventional cribs with maximum spacing between cribs to be 10 feet. These supports shall be installed the entire length of the tailgate entry, not to extend beyond the recovery area, in the panel presently being mined. These supports are to be maintained even with the working face in the tailgate entry for the subsequent panel.

Tailgate and head gate entries, some 8,000 to 12,000 feet in length, are originally created by a continuous miner machine and conventional roof supports, i.e., roof bolts, are installed as the primary means of roof support. Cribs provide supplemental roof support. While there are several types of cribs, conventional cribs are typically made of rough-cut lumber, 6" by 6" by 30" long. The members are stacked in layers of two, at 90 degree angles, or crosswise, until the stack reaches the roof of the entry. The stack is generally "capped" with a two inch thick board and wedges are driven to fit the crib tightly against the roof. The additional support provided by cribs helps prevent the roof from sagging and deteriorating. It also helps to prevent deterioration and rolling of the ribs, i.e., portions of the wall of the entry breaking off and falling into the entry. As the wood dries, it typically shrinks, which can cause the cribs to loosen. They are tightened again by driving the wedges in further and/or adding more material. Respondent contends that there is no requirement in its roof control plan that cribs, initially properly installed, be subsequently maintained tight against the roof. However, any logical construction of the plan would require that the cribs be properly installed and maintained tight against the roof. In the words of the inspector, if the cribs are not tight against the roof, they are not providing roof support and are little more than stacks of lumber interfering with ventilation and travel through the entry.

The supplemental roof support provided by the cribs is especially important in the first 100 feet "outby," i.e., in the direction of the advancing longwall. As the longwall mining machine advances, the unsupported roof left behind in the gob area is allowed to fall. MSHA's field office supervisor, Kenneth Ely, explained that the forces generated by the falling roof are often transferred forward to the area in front of the long wall machine, especially in the first 30-100 feet. Beyond 100 feet in front of the advancing long wall, the tailgate entry is like any other entry and the primary roof support, roof bolts, provide adequate support. The requirement for tailgate entry cribs in the roof control plan is, then, that there be a single row of cribs installed at minimum spacing of 7' from where the long wall operation began through 100 feet in front of the advancing long wall. Although the plan states that cribs are required for the entire length of the tailgate entry, the absence of cribs further than 100 feet in front of the advancing long wall would not be considered a violation of the plan.

Inspector Shubert testified that as he walked the approximate 7,000 foot length of the tailgate entry, from the longwall to the main entry, he observed that the majority of the cribs were not capped tight against the roof. Respondent actually installs two rows of cribs on 5-7 foot spacings -- at least twice as many as required by its roof control plan. Shubert passed by and had an opportunity to observe each of the approximately 2,000 cribs in the tailgate entry that he inspected. Some had cap boards and wedges, some didn't. There were gaps as much as 3 to 6 inches between the cribs and the roof. He observed deterioration in the roof and sloughing of material from the ribs. He stated that he would see where a rib had rolled for about 20 feet, would proceed another 50 feet and see another rib roll that had knocked over a couple of cribs. He recalled that the objectionable condition of the roof was more severe in the first 150 feet of the entry, the rest was not as bad. He did not note the specific location of the ineffective cribs or the places where the rib had rolled and knocked over the cribs, which he estimated would have taken six to eight pages to describe. Consequently, he just cited the whole area. He talked to Bell about the cribs and advised him that he was going to issue a citation. His field notes refer to cribs not being tightly capped against the roof, deterioration of the roof and rib rolls, but do not specify the number or location of the objectionable conditions.

Bell testified that he checked the cribs within the first 100-150 feet of the tailgate entry and they were properly installed, were tightly capped against the roof and there was no roof deterioration. He had inspected the tailgate entry less than a month before, noticed some loose cribs, and they had been tightened. He acknowledged that there were some loose cribs, which surprised him because of the recent tightening, but that they were not within 100-150 feet of the longwall. He also acknowledged that there were some cribs knocked down at the #19 crosscut due to a rib roll, but that was some 2,000 feet away from the longwall, and the area had been "dangered off", i.e., marked to forbid miners from entering the area. Shubert discussed the cribs with him but not until they had reached the main entry

#### *Conclusions of Law - Further Factual Findings*

In an enforcement proceeding under the Act, the Secretary has the burden of proving an alleged violation by a preponderance of the evidence. *In re: Contests of Respirable Dust Sample Alteration Citations*, 17 FMSHRC 1819, 1838 (Nov. 1995), *aff'd.*, *Secretary of Labor v. Keystone Coal Mining Corp.*, 151 F.3d 1096 (D.C.Cir. 1998); *ASARCO Mining Co.*, 15 FMSHRC 1303, 1307 (July 1993); *Garden Creek Pocahontas Co.*, 11 FMSHRC 2148, 2152 (Nov. 1989); *Jim Walter Resources Inc.*, 9 FMSHRC 903, 907 (May 1987).

In order to establish the alleged violation, the Secretary must prove that there was not at least one properly installed crib every 7 feet in the first 100 feet of the tailgate entry. Improperly installed or missing cribs in the remainder of the entry, at that time 7,000 feet in length, would not violate the roof control plan. Because Respondent installed two rows of cribs, twice as many as required by the roof control plan, the Secretary cannot establish a violation by simply proving that some cribs within the critical first 100 feet of the entry were not tightly capped against the roof. With two rows of cribs on 7 foot centers, some 28 cribs would have been installed in the

first 100 feet of the entry. The roof control plan requires only one row of cribs, at most 14.<sup>1</sup> Consequently, up to 14 of the 28 cribs could be improperly installed or knocked over without violating the roof control plan. It was incumbent upon the Secretary, therefore, to prove that either there were no properly installed cribs in that area or that the cribs that were properly installed did not satisfy the requirement of the plan. The Secretary did not introduce any evidence as to the specific locations of improperly installed cribs in the first 100 feet of the entry. Consequently, in order to prevail, the Secretary must prove that there were no properly installed cribs in that area. This she failed to do.

Although Inspector Shubert noted in the citation that all of the cribs in the tailgate entry were loose, his testimony was more equivocal. He testified that some cribs had been properly installed and at least tacitly admitted that some were tight to the roof. He also testified that the rib roll and loose cribs were in the 100-150 feet of the tailgate entry closest to the longwall. However, his field notes are silent as to the location of those deficiencies. According to Bell, he and Shubert did not discuss their observations until they had exited the entry and there is no indication as to when Shubert recorded his observations, but he likely did so after leaving the entry. Accepting Bell's testimony, in part, which is largely consistent with Shubert's, I find that there were loose cribs throughout the tailgate entry, including the critical 100 feet closest to the advancing longwall. However, there were also properly installed and maintained cribs in the entry, including the critical 100 foot zone. The rib rolls and knocked over cribs were not in that area, but were in the area of the 19<sup>th</sup> crosscut.

While the Secretary presented evidence sufficient to support a finding that there were some loose, improperly installed, cribs in the first 100 feet of the tailgate entry, she failed to prove that all of the cribs in that area were deficient. She did not present evidence of the specific locations of improperly installed cribs and, consequently, failed to establish that the cribs that were properly installed did not satisfy the requirements of Respondent's roof control plan.

### **ORDER**

Based upon the foregoing, Citation Number 7667878 is **VACATED**, and the petition is **DISMISSED**.

Michael E. Zielinski  
Administrative Law Judge

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<sup>1</sup> The plan specifies that there be no more than "7' between cribs." If measured from the edges of the cribs, there would be one crib required every 9.5 feet, or approximately 10 cribs per 100 feet.

Distribution:

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