

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W. Suite 9500
Washington, DC 20001-2021

October 27, 2003

DRUMMOND COMPANY, INC.,	:	CONTEST PROCEEDING
Contestant	:	
v.	:	Docket No. SE 2003-102-R
	:	Citation No. 7395287; 03/26/2003
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Shoal Creek Mine
Respondent	:	Mine ID: 01-02901

SUMMARY DECISION

Appearances: Timothy M. Biddle, Esq., Bridget E. Littlefield, Esq., Crowell & Moring, Washington, D.C., for the Contestant;
Thomas A. Grooms, Esq., U.S. Department of Labor, Nashville, Tennessee, for the Respondent.

Before: Judge Weisberger

Statement of the Case

In this Notice of Contest proceeding, Drummond Company, Inc., (Drummond) seeks to contest Citation No. 7395287 issued to it on March 26, 2003, which alleges that Drummond violated 30 C.F.R. Section 75.363(b). On June 27, 2003, Drummond filed a motion for summary decision. On September 23, 2003, the Secretary of Labor, (Secretary) filed a statement in opposition to Contestants motion for summary decision, and a cross motion for summary decision.

I. Findings of Fact

The parties' motions indicate that there is no genuine issue as to any material fact. Drummond operates the Shoal Creek Mine, an underground coal mine. During the night shift of March 24, 2003, in Entry No. 6 of the North Mains section, one miner's methane detector displayed two point zero percent methane, and another miner obtained a reading in excess of five point zero percent methane. One of the miners told Mike Sanders that he found six point five percent methane. Sanders then informed Scott Meadows, the de-watering coordinator at the mine, and a certified examiner, that there was an accumulation of gas at the mine and requested

that he come to the section.¹ Meadows arrived at the section, and his methane detector showed a reading of two point two, to two point five percent methane. He assumed that if he were to go further, the level of methane would increase. Meadows then took measures to ventilate the methane from the area.

Meadows filled out a on-shift examiners report dated March 24, 2003, and noted that at 5:30 a.m., in the location “NO. MAINS”, there was a hazardous condition which he described as follows: “Excessive Levels of CH₄” followed by the notation “2.2%”. The comments section of the on-shift examiners report states that “During supplement exam for pump repairs in No. Mains return, *excessive levels of CH₄ exceeding 2%* [w]ere detected[.] [P]ower was removed from North Mains and G-4 area. After further exams water was discovered blocking right return [at crosscut No. 39]. Management was notified[,] mine[] was evacuated and ventilation was restored around water to lower CH₄. [Sic]. (Emphasis added.)

On March 26, 2003, Inspector Michael Pruitt issued Citation No. 7395287 which states as follows:

The examiner failed to record the hazardous condition found on the North Mains. This record shall be kept in a book maintained for this purpose on the surface at the mine. The examiner found an excess [sic] of 5% percent methane. A 107(a) imminent danger order was issued and the mine was withdrawn. This condition was discovered at approximately 0410 and not recorded. The examiner at 0520 put in the book 2.5 percent of methane. [Sic]. This examiner stated that he never traveled to the face to check the methane, due to the high levels of CH₄ methane and there was no air movement in this area. [Sic].

Citation No. 7395287 alleges a violation of 30 C.F.R. Section 75.363(b) which, as pertinent, provides as follows:

A record shall be made of any hazardous condition found. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by completion of the shift on which the hazardous condition is found and shall include the nature and location of the hazardous condition and the corrective action taken.

II. Discussion

Section 75.363(b), supra, requires as pertinent, that 1) a report of “any hazardous

¹ Initially, Sanders testified in his deposition that he did not remember whether he reported to Meadows the six point five percent reading that one of the miners had reported to him. Later on in the deposition he said that he thought it was accurate that he had told Meadows that six percent methane had been found at the face.

condition” found shall be recorded by the completion of the shift on which the condition was found, and 2) the report shall include “the nature” and location of the hazardous condition and the corrective action taken. The uncontroverted facts herein establish that a record was made by Meadows, a certified examiner, in the on-shift examiner’s report of March 24, 2003, reporting excessive levels of methane at the location “NO. MAINS” followed by the notation “2.2%”. Further, the comments section of this report state that in the North Mains return there was a detection of excessive levels of methane “exceeding two percent”, and that the following corrective action was taken: power was removed from the North Mains, the mine was evacuated, and ventilation was restored to lower the methane. It thus would appear that Drummond fully complied with the dictates of Section 75.363(b), supra.

It is the position of the Secretary that Drummond did not comply with Section 75.363(b), supra, because Meadows did not report methane at five percent, which he had measured, and methane at six percent, which Sanders told him that he had found, both of which readings indicated methane levels in the explosive range. In this connection, the Secretary relies on the definition of the term “nature” as set forth Webster’s Third New International Dictionary (1993 Edition) as ... 2b: “The distinguishing qualities or properties of something” and 2a: “The essential character or constitution of something.” The Secretary argues that, because Meadows reported only a level of two-point-two percent of methane, he did not convey to management the distinguishing quality, or property, or the essential character of the hazard which he found.

I find that the report by Meadows clearly complied with the plain meaning of the clear language of Section 363(b), supra, specifically, I find that his report of excessive levels of CH₄ exceeding two percent, to clearly set forth the nature or distinguishing character of the hazard that he found, i.e., methane in excess of two percent, which, is clearly a hazardous condition, as this finding requires withdrawal of miners and the necessity of ventilation changes, (30 C.F.R. Section 75.323). There is not any requirement in Section 363(b), supra, on its face, to set forth each and every hazardous methane reading amount found. A report of methane that exceeded two percent clearly identifies the nature, or essential character of the hazard.

I thus find that based on the material facts that are not in issue, Drummond was in compliance with Section 363(b), supra. Accordingly, I find the citation was improperly issued, Drummond is entitled to summary decision as a matter of law.

Order

It is **Ordered** 1) that Drummond’s motion for summary decision is **Granted**, 2) that the Secretary’s cross motion for summary decision is **Denied**, and 3) the Notice of Contest herein shall be **Sustained**.

Avram Weisberger
Administrative Law Judge

Distribution: Certified Mail

Timothy M. Biddle, Esq., Bridget E. Littlefield, Esq., Crowell & Moring, LLP, 1001
Pennsylvania Ave., N.W., Washington, DC 20004

Thomas A. Grooms, Esq., Office of the Solicitor, U.S. Department of Labor, 2002 Richard Jones
Rd., Suite B-201, Nashville, TN 37215

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