

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 13, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 95-188-M
Petitioner : A.C. No. 48-00152-05644
: :
v. : FMC - Trona Mine
: :
FMC WYOMING CORPORATION, :
Respondent :

DECISION

Appearances: Robert Cohen, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;
Matthew F. McNulty, III, Esq.,
Salt Lake City, Utah,
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. the "Act." The Secretary of Labor on behalf of the Mine Safety and Health Administration, (MSHA), charged the Respondent, the operator of Trona Mine, with a permissibility violation of mine safety standards set forth in 30 C.F.R. § 57.22305.

The operator filed a timely answer contesting the alleged violation and the amount of the proposed penalty. This matter, originally noticed for hearing to be held on April 3, 1996, but was by oral stipulation of the parties and consent of the Judge, it was heard on April 2, 1996, in Salt Lake City where other cases involving the same parties were heard.

The Trona mine is a large underground mine. The mine has a level horizontal body of ore with approximately 1,500 to 1,600 feet of cover. MSHA charged that the proximity switches for the

number 4 hoist located at the top of the number 4 shaft were not maintained in permissible condition as required by 30 C.F.R. § 57.22305.

At the hearing, counsel for the Secretary stated the issues with respect to the permissibility violation alleged in Citation No. 4338843, were (1) whether or not there was a violation of the safety standard and (2) if there was a violation, whether or not the violation was significant and substantial and (3) the appropriate penalty.

The Secretary presented the testimony of the MSHA mine inspector, Danny Frey, who issued the citation in question. He testified the Trona mine was a large underground mine. The mine releases some methane gas during the mining process. Frey stated if the methane is not properly controlled, there can be an explosion hazard. To have an explosion, there must be 5 to 15 percent methane in the mine atmosphere and the oxygen content can be as low as 12 percent and of course, there must be an ignition source. The mine is a gassy mine that liberates more than one million cubic feet of methane in 24 hours and is subject to spot inspection on a five day interval under § 103(i) of the Act. The mine has a forced air ventilation system. The shaft, in question, is used for hoisting muck from the mine. It's not a man hoist and is not used to transport miners. It is used to expel the return (exhaust) air from the mine. This shaft extended from the surface of the mine to the mine workings some 1,500 to 1,600 feet below. The return air enters the No. 4 shaft at the bottom of the shaft and goes straight up through the vertical shaft, in question, into the atmosphere at the surface. The switches, in question, are located above ground level. The switches, nevertheless, are required to be permissible because the exhaust air as it comes out of the shaft has the potential of containing methane. Since the switches were not permissible, there was a violation of 30 C.F.R. § 57.22305. The primary question remaining was whether the violation was properly designated S&S.

The inspector took readings of the methane content of the exhaust air as it entered the bottom of the No. 4 shaft approximately 1,500 to 1,600 feet below the location of the proximity switches. The inspector on cross-examination testified that using the methane readings obtained, there was not enough methane content in the return air at the proximity switches to have an ignition or explosion. There would have to be a minimum of 5 percent methane content to have an explosion and the methane readings obtained shows the methane content of the exhaust air to be less than 1 percent. (Govt. Ex. 1 & 2). Consequently, the likelihood of an explosion was remote rather than reasonably likely.

After all the evidence was presented, there was an off the record discussion of the evidence and it was agreed and stated for the record that based upon the evidence presented at the hearing that Citation No. 4339843 should be classified as non S&S. This conclusion was based on the lack of evidence of sufficient methane in the area of the proximity switches to create a reasonable likelihood that the hazard contributed would result in an injury of a reasonable serious nature. Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984).

Upon consideration of the statutory criteria in section 110(i) of the Mine Act, the appropriate penalty of this violation of the cited safety standard is \$100.

Order 4338895 issued September 9, 1994, is vacated at the request of Petitioner as it is now believed an extension of the abatement period should have been issued rather than a 104(b) order since the operator was moving towards compliance.

ORDER

In view of the foregoing, Order No. 4338893 is **VACATED**; Citation No. 4338834 is modified to delete the S&S finding and as so modified the citation is **AFFIRMED**. FMC shall pay a civil penalty of \$100 to the Secretary of Labor within 30 days of the date of this order. Upon receipt of payment, this case is dismissed.

August F. Cetti
Administrative Law Judge

Distribution:

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