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MSHA V. ORACLE RIDGE MINING PARTNERS
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1191FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, DC
June 6, 1980

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA) Docket No. WEST 79-248-M

v.

ORACLE RIDGE MINING PARTNERS

DECISION

In this civil penalty proceeding, the administrative law judge held that Oracle Ridge Mining Partners violated a mandatory safety standard and assessed a civil penalty of \$122. We reverse the judge's decision.

A Mine Safety and Health Administration inspector issued a citation to Oracle Ridge alleging a violation of 30 CFR \$57.6-20(c). That regulation requires:

Magazines shall be: *** Constructed substantially of noncombustible material or covered with fire-resistant material.

The citation provided:

... The explosives and detonators magazines were not constructed of substantial material. The magazines were constructed of aluminum sheeting.

The two magazines were constructed of aluminum sheeting 1/16th of an inch thick and the detonator magazine was lined with 3/4-inch plywood.

The magazines were located in cutouts in the side of a mountain. The

judge held that the "constructed substantially of noncombustible material" provision of the regulation must be interpreted in light of the definition of "substantial construction" in 30 CFR §57.2, i.e., "constructed of such strength, material and workmanship that the object will withstand all reasonable shock, wear, and usage to which it would be subjected." Under his interpretation, the standard effectively requires two duties of operators: to construct magazines to minimize risk of fire, and to construct magazines of sufficient density to

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"withstand all reasonable shock, wear and usage." He accepted the inspector's testimony that a rock could fall on top of the magazines, pierce the aluminum, and set off the detonators. He found that because of the potential rock fall hazard, the magazines would not withstand "reasonable shock, wear, and usage" to which they would be subjected. Accordingly, the judge determined that the operator did not comply with the density requirement of the standard, and assessed a civil penalty.

On review Oracle Ridge argues that the judge erroneously construed the standard to require that magazines be built in accordance with the definition of "substantial construction" in 30 CFR §57.2. The operator maintains that the standard was intended only to minimize the risk of fire and that this purpose is not related to the density of magazine construction. We agree.

Section 57.6-20(c) permits alternative methods of compliance: Magazines shall be "constructed substantially of noncombustible material" or "covered with fire-resistant material." This latter method of compliance obviously is directed solely at fire prevention. Because compliance can thus be achieved without regard to density by covering the magazines with fire-resistant material, compliance by the alternative method of having magazines "constructed substantially of noncombustible material" obviously is also satisfied with regard to fire prevention only, and without regard to density.

Accordingly, we hold that 30 CFR 57.6-20(c) requires that magazines be constructed for the most part of noncombustible material or covered with fire-resistant material. We reject the judge's interpretation which imposes a density requirement for compliance with the standard. 1/ The decision of the judge is reversed.

Richard V. Backley, Commissioner

Frank F. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

1/ Our decision is restricted to the conclusion that the purpose of the standard cited, 30 CFR 57.6-20(c), is limited to fire prevention. We do not reach the issue of whether an operator has a duty to build magazines of sizeable bulk to withstand all reasonable shock, wear and usage. Cf, e.g., 30 CFR 57.6-20(d). Scrutinizing and rewriting of this regulation by the Secretary would appear to be appropriate, however, if his intention is to mandate such a duty.

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