

CCASE:
SOL (MSHA) V. FMC CORPORATION

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

July 2, 1984
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. WEST 82-146-RM
WEST 82-207-M

FMC CORPORATION

DECISION

This consolidated proceeding involves the interpretation and application of 30 C.F.R. § 57.6-5, a mandatory safety standard dealing with storage of blasting agents. 1/ A Commission administrative law judge held that the operator, FMC Corporation ("FMC"), violated the standard and assessed a civil penalty. 5 FMSHRC 627 (April 1983)(ALJ). We granted FMC's petition for discretionary review. We affirm.

The relevant facts were stipulated. On March 10, 1982, during an inspection of FMC's trona mine located in Green River, Wyoming, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued FMC a citation alleging a violation of section 57.6-5. The citation stated, in relevant part, that ammonium nitrate fuel oil ("ANFO"), a blasting agent, was stored impermissibly close to combustible hydraulic oil. 2/

1/ 30 C.F.R. § 57.6-5 provides:

Mandatory. Areas surrounding magazines and facilities for the storage of blasting agents shall be kept clear of rubbish, brush, dry grass, or trees (other than live trees 10 or more feet tall), for a distance not less than 25 feet in all directions, and other unnecessary combustible materials for a distance of not less than 50 feet.

2/ ANFO is a blasting agent as defined by 30 C.F.R. § 57.2, which incorporates by reference the Department of Transportation's classification scheme for blasting agents set forth at 49 C.F.R. § 173.114a. Ammonium nitrate is an essential ingredient in nearly all commercial explosives, including dynamite and water gels. Its predominant use is in the form of AN prill, a small porous pellet mixed with fuel oil for use as a blasting agent. Du Pont Co.,

Blasters' Handbook 12-15, 55-66 (16th ed. 1977). This ammonium nitrate fuel oil mixture is referred to as ANFO. The most widely used ANFO product is an oxygen-balanced, free-flowing mixture of about 94 percent ammonium nitrate prills and six percent No. 2 diesel fuel oil. Id. at 55.

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At approximately 9:40 a.m. the inspector observed 9.5 pallets of ANFO within the supply yard located near the No. 3 shaft. The ANFO, which had an approximate total weight of 10 tons, was located within eight feet of a portable 500-gallon oil dispensing tank that was filled with combustible hydraulic oil. 3/ The inspector further observed that a small quantity of the hydraulic oil was located on the ground under the tank. Vehicular traffic in the area presented a possible ignition source.

Upon making the foregoing observation the inspector informed FMC personnel of the condition. Thereafter the inspector issued the subject citation charging a violation of 30 C.F.R. § 57.6-5 because hydraulic oil was located within eight feet of ANFO; because the operator failed to place a warning sign in the area; and because the supply yard was not guarded. The operator removed the hydraulic oil from the supply yard within minutes and indicated that the oil had been mistakenly located there. The operator further contended that the supply yard had been routinely used over the years for the placement of materials to be taken to the underground work areas and that ordinarily the materials would be located therein for approximately 5 hours. However on this day, because of unspecified problems, the process of removing the materials underground had been delayed. In fact the ANFO, which had been delivered into the supply yard at approximately 8:00 a.m., was not completely removed from the supply yard and taken into the mine until sometime between 4:00 p.m. and 5:00 p.m.

The sole issue litigated by the parties before the Commission's administrative law judge was "whether the agreed upon facts show that 9.5 pallets of ANFO, a blasting agent, w[ere] in 'storage' as that term is used in the mandatory safety standard set forth in 30 C.F.R. § 57.6-5." 5 FMSHRC at 627. The judge found that the supply yard near the No. 3 shaft was a "facility" used as a holding area for materials, including blasting agents, intended for use in the underground parts of the mine. 5 FMSHRC at 629. The judge stated, "All storage connotes a temporary placement awaiting further movement or transport to the place of ultimate rest or use." Id. The judge further found that for an hour and a half, 9.5 pallets of ANFO had been stored in impermissible proximity to combustible hydraulic oil. Id. Based on these findings, the judge concluded that the operator had violated section 57.6-5, and assessed a civil penalty of

\$119, an amount stipulated to by the parties. The judge also held that the other conditions described in the citation, the absence of a guard and a danger sign, were not covered by the cited standard. The Secretary of Labor has not appealed this latter aspect of the judge's decision.

On review, FMC argues that "storage," for the purpose of the safety standards governing explosives, means "the setting aside of blasting agents and explosives in a building or structure until needed." FMC contends that because the supply yard in question was neither a structure

3/ "Combustible" is defined in 30 C.F.R. § 57.2 as "capable of being ignited and consumed by fire."

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nor a building it was not a "facilit[y] for the storage of blasting agents" within the meaning of section 57.6-5. FMC argues also that the ANFO in question was in the process of delivery to the mine when the citation was issued and, accordingly, was not subject to the standards governing storage of explosives and blasting agents. Rather, FMC asserts that the delivery process is governed by the standards dealing with the transportation of explosives and blasting agents. 30 C.F.R. §§ 57.6-40 through 57.6-77. On the facts of this case, we do not agree.

There is no dispute that some 10 tons of ANFO, a blasting agent, were placed for a period of time within eight feet of a tank filled with 500 gallons of hydraulic oil, a combustible material. Therefore, the issues to be decided on review are whether the No. 3 shaft supply yard was a "facilit[y] for the storage of blasting agents" within the meaning of section 57.6-5, and whether FMC's temporary placement of the ANFO in the supply yard constituted "storage" within the meaning of the standard.

Section 57.6-5 applies to the storage of blasting agents in "magazines" and "facilities for the storage of blasting agents."

The term "magazine" is defined in 30 C.F.R. § 57.2 as "a facility for the storage of explosives, blasting agents, or detonators." 30 C.F.R. § 57.6-20 provides detailed criteria for the construction of magazines. However, there is no comparable definition of the term "facilities." While it is clear that the word facility may connote an enclosed structure, its meaning in ordinary usage is broader. Facility is defined as "something ... that is built, constructed, installed, or established to perform some particular function or to serve or facilitate some particular end." Webster's Third New International Dictionary (Unabridged) 812 (1981). In other words, the primary significance of the term is functional rather than structural. Therefore, while a magazine is a structure that must

meet the specifications set forth in section 57.6-20, a facility, considered from the standpoint of ordinary usage, can be either an enclosed structure like a magazine, or simply an area designated for storage.

The No. 3 shaft supply yard was a demarcated area regularly used for the holding of supplies, including blasting agents to be transported underground. Thus, we conclude that the supply yard was a storage facility. When blasting agents were stored therein, such storage was required to be in conformity with section 57.6-5.4/

4/ In relevant part, the citation in this case dealt only with the impermissible presence of a combustible material. This case does not require us to, and we do not, reach the question of whether, under the cited standard or other standards, "facilities for the storage of blasting agents" must also be enclosed. We conclude merely that the supply yard as used at the FMC mine was a storage facility for blasting agents, not that it was a storage facility conforming to all possibly applicable requirements.

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The next question is whether FMC's temporary placement of the ANFO in the supply yard facility constituted storage. In ordinary usage, the term storage, "the act of storing or the state of being stored," covers a wide variety of meanings, including, to accumulate, to supply, to amass, or to keep for future use. Webster's, at 2252. Thus, the term is sufficiently broad to include short-term, long-term and semi-permanent storage and as used in section 57.6-5, encompasses both short-term and long-term storage.

Applying the foregoing construction of the standard to these facts, we conclude that the ANFO was stored in the supply yard within the meaning of the standard. Although FMC argues that the ANFO was in transit, the 9.5 pallets of ANFO observed by the inspector had been in the supply yard for over an hour and some of those pallets were not moved below for more than six hours. This situation was not placement for a de minimis period of time during an essentially uninterrupted transit process. The standard was developed to prevent the very situation that existed in this case--the storage of blasting agents in close proximity to a combustible material. The judge's application of the standard in this case properly effectuates that purpose. Because the ANFO was stored in impermissible proximity to the hydraulic oil, a violation of section 57.6-5 occurred.

Accordingly, on the bases discussed above, we affirm the judge's decision. 5/

A. E. Lawson, Commissioner

5/ Commissioner Nelson did not participate in the consideration or

disposition of this case.

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