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SOL (MSHA) V. KERR-McGHEE CORP.  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND  
HEALTH ADMINISTRATION (MSHA),  
PETITIONER

v.

KERR-MCGEE CORPORATION,  
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. CENT 79-156-M  
ASSESSMENT CONTROL NO.  
29-00782-05002-F

MINE: CHURCHROCK NO. 1

DECISION

APPEARANCES:

Sandra D. Henderson, Esq. Office of the Solicitor, United States  
Department of Labor, 555 Griffin Square, Suite 501, Dallas, Texas  
75202,  
for the Petitioner

Carolyn G. Hill, Esq., Kerr-McGee Center, P. O. Box 25861,  
Oklahoma City, Oklahoma 73125, and George W. Kozeliski, Esq., P.  
O. Box 1059, Gallup, New Mexico 87301,  
for the Respondent

Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

Petitioner seeks an order assessing a civil monetary penalty against Respondent for its alleged violation of 30 CFR 57.15-5. The pertinent part of that regulation states as follows: "Safety belts and lines shall be worn when men work where there is danger of falling; ...." The citation attached to the complaint alleges that a shaft miner was fatally injured when he fell into a 36 inch diameter bore hole while using a 20 foot long cable sling instead of a standard company constructed 10 foot long safety line. The citation further alleges that the 20 foot long cable sling allowed the miner to fall 9 1/2 feet into the bore hole at which time his safety belt failed and he fell an additional 54 feet to the level below.

By way of answer the Respondent alleges that it was in compliance with the cited standard.

FINDINGS OF FACT

1. The fatal accident occurred at Respondent's uranium mine located near Gallup, New Mexico on December 13, 1978.

2. The shaft where the accident occurred was originally a 36 inch diameter bore hole with a 1,529 foot vertical drop. The bore hole was being enlarged to a 12 foot diameter concrete lined shaft. The shaft depth had been completed to a depth of 1,475

feet.

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3. The concrete lined shaft was to be used by Respondent for hoisting muck and supplies.

4. A "fine" grizzly plug, 38 inches in diameter and 3 feet high, was lowered over the bore hole and excessive muck was then leveled off around the grizzly plug making a platform from which the miners could install wire mesh and bolts.

5. The "fine" grizzly plug was raised or lowered by attaching it to a 20 foot long cable which was attached to the bottom of the bucket used to transport men and material in the shaft.

6. On the date of the accident, the lead miner and the decedent had completed installing a section of wire mesh and needed to relieve the muck pile in order to install another section of wire mesh.

7. The lead miner belled the bucket down to the bottom of the shaft, tied the "fine" grizzly plug to the bottom of the bucket, and the decedent used the 20 foot long cable as a safety line to secure himself to the wire mesh.

8. The lead miner then raised the grizzly plug approximately two feet and called down to the decedent to clean off the grizzly plug, but he got no response.

9. The lead miner then observed the safety line of the decedent hanging into the 36 inch diameter bore hole and decedent's body was later recovered approximately 54 feet below at the bottom of the bore hole.

10. The safety belt was in place around decedent's body, but the "D" ring which had been attached to the safety belt had been torn loose and was still attached to the safety line.

11. The lower end of the safety line was located at a point approximately 9.5 feet down into the bore hole.

#### DISCUSSION AND CONCLUSIONS

The regulation cited requires the use of a safety belt and line "where there is danger of falling." The Respondent did supply the decedent with a safety belt and line. However, the deceased miner did not use the safety line in a manner that would prevent him from falling approximately 9.5 feet down the bore hole. The decedent had tied off his safety line on two sections of the wire mesh before the accident occurred (Tr. 49). The miner could have tied the line off shorter by wrapping the line around several sections of the wire mesh (Tr. 49-50). Thus, the miner could have shortened his safety line sufficiently to prevent the fall into the bore hole.

The original length of the safety line was not as important as the use which was subsequently made of it. It could have been 15, 20 or 30 feet long. Proper use of the safety line would be

to tie it off so that it is shortened sufficiently to be of use "where there is danger of falling". Otherwise, there would be little value in wearing a safety belt and line.

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Evidence was introduced which showed that the safety belt worn by the decedent should have been able to withstand, without failure, a test of three successive drops of a 250 pound weight falling free through a distance of six feet. (Exhibit P-4, par. 5.3). The Respondent points out that even if the Petitioner had produced evidence of a "free fall" of 9.5 feet by the decedent who weighed 155 pounds, by mathematical calculation, the belt should have been able to withstand a free fall of 9.68 feet. The safety belt may not have lived up to its specifications by .18 of a foot, but the point is that had the safety line been properly tied off to shorten it, the deceased would not have fallen 9.5 feet into the bore hole, whether it was a free fall or a sliding fall.

I conclude that although a safety belt and line were worn by the decedent, the regulation was not complied with since the safety line as utilized by the decedent was ineffective in reducing the possibility of falling into the bore hole "where there was danger of falling."

After the Petitioner rested his case, the Respondent made a motion to dismiss on the basis that the Petitioner had failed to present a prima facie case. I took the motion under advisement. I now deny the motion based upon my conclusion that the Petitioner did show a violation of the regulation.

Since the cited regulation was not complied with by the failure of the miner to tie off the safety line in order to shorten it, and thus prevent the accident that did occur, is the Respondent operator liable for a violation of 30 CFR 57.15-5 as alleged?

It has recently been held that the Federal Mine Safety and Health Act of 1977 is a strict liability statute, that an operator is vicarously liable under the doctrine of respondeat superior for both the violations and negligence of its employees, and that the negligence of an operator's employee is imputable to the operator for the purpose of assessing an appropriate civil penalty. Secretary of Labor, Mine Safety and Health Administration (MSHA) v Warner Company, (Docket No. Penn 79-161-M, April 28, 1980).

The general mine foreman for the Respondent testified that the decedent could have used the line properly as a safety line if it had been doubled through the wire mesh and both ends hooked to the safety belt. (Tr. 103). The witness also testified that the Respondent operator does not approve of using this type of line for a safety line because it may become damaged (Tr. 104), and that the customary lines provided by the company are ten to fifteen feet in length (Tr. 102). Approximately two or three days before the accident, fifteen to twenty customary safety lines were constructed for use of the miners by the Respondent, but the decedent did not use any of them (Tr. 102, 103). I consider this as mitigating evidence in regard to assessing an appropriate civil penalty.

I conclude that the violation alleged did occur, and based upon the legal principles set forth in the case of Warner Company (Id.) I conclude that the Respondent is liable therefor.

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ORDER

Respondent is ordered to pay a civil penalty of \$1,500.00 within thirty days of the date of this Decision for the violation of 30 CFR 57-15.5, as alleged.

Jon D. Boltz  
Administrative Law Judge