

Mine Safety and Health Administration Rules to Live By - November 2016 Case Summaries



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Beginning in February 2010, the **Mine Safety and Health Administration** rolled out its **Rules to Live By Program**. This program recognized certain standards both in coal and metal/nonmetal that have been identified by MSHA as to being leading causes of mining fatalities throughout the country.

Rules to Live By I was based on MSHA's analysis of 24 standards – 11 in coal mining and 13 in metal and nonmetal mining – frequently cited in fatal accident investigations. These violations fell into 9 different accident categories:

Falls from Elevation

Falls of Roof and Rib

Operating Mobile Equipment (Surface)

Operating Mobile Equipment (Underground)

Maintenance

Lock and Tag Out

Struck by Mobile Equipment (Surface)

Struck by Mobile Equipment (Underground)

Blocking Against Motion

Metal/Nonmetal Standard

30 C.F.R. § 56.12017 - Work on Power Circuits

Power circuits shall be deenergized before work is done on such circuits unless hot-line tools are used. Suitable warning signs shall be posted by the individuals who are to do the work. Switches shall be locked out or other measures taken which shall prevent the power circuits from being energized without the knowledge of the individual working on them. Such locks, signs, or preventative devices shall be removed only by the person who installed them or by authorized personnel.

Gilbert Development Corp, 32 FMSHRC 185 (Feb. 2010) (ALJ Manning)

MSHA alleged that Gilbert Development violated 30 C.F.R. Section 56.12016 (later modified to a violation of 30 C.F.R. Section 56.12017) following a non-fatal accident where an employee tried to energize a defective 480 volt circuit breaker causing a short and arc flash. MSHA alleged that the main line breaker was deenergized and locked out but that there was no sign or warning notice posted at the power switch to indicate the hazard. The key for the lock was left where an employee was able to find it and energize the electrical system causing the short. MSHA alleged that the violation was S&S, the result of the operator's high negligence, and an unwarrantable failure to comply with a mandatory standard. A penalty of \$60,000.00 was proposed by MSHA.

While ALJ Manning upheld the S&S determination he vacated the unwarrantable failure finding because the operator had been using the same lockout/tagout system "for some time" and the operator had never been issued an enforcement action for violating MSHA's lockout/tagout standards. Moreover, the operator was not on notice that greater efforts for compliance were necessary to comply with the standard, the alleged violation was not obvious, and the operator did not realize that it was violating the standard. As a result, ALJ Manning reduced the negligence from high to low and reduced the penalty from \$60,000.00 to \$5,000.00.

IMC-Agrico Co, 19 FMSHRC 301 (Feb. 1997) (ALJ Hodgdon)

Following a fatality MSHA alleged that the operator violated 30 C.F.R. Section 56.12017 because "[t]he power circuit was not de-energized and locked out and hot line tools were not being used." The parties agreed that the power line which caused the fatality was not de-energized but disputed whether the decedent was working on a "power circuit." MSHA issued a Section 104(d)(1) S&S citation that was the result of the operator's moderate negligence and proposed a penalty of \$5,000.00.

ALJ Hodgdon reduced the violation from moderate negligence to none and reduced the penalty from \$5,000.00 to \$500.00 because the negligence of the decedent (a

rank-and-file miner) who was not in a supervisory position his negligence could not be imputed to the operator.

Coal Standard

30 C.F.R. § 75.220(a)(1) - Roof Control Plan

Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.

Harlan Cumberland Coal Company, 20 FMSHRC 1275 (Dec. 1998)

MSHA alleged that the operator violated 30 C.F.R. Section 75.220(a)(1) by impermissibly deviating from the pillaring provisions of its roof control plan. At the hearing the ALJ upheld the violation of 30 C.F.R. Section 75.220(a)(1) but vacated the S&S finding. The operator then petitioned for review before the Commission arguing that the Secretary failed to establish a violation of the standard.

MSHA contended that the operator's roof control plan required it to return to the original mining direction to remove pillars after adverse conditions were encountered which required additional pillars to be removed. The Commission agreed with the operator and found that its deviation from its roof control plan was not a violation and actually provided a safer means to remove the pillars. Had MSHA's contention be allowed to stand, the Commission concluded that the operator would have subjected miners to an extremely dangerous and unpredictable area of mine roof. Moreover, because the operator's roof control plan did not explicitly require the operator to return to the original mining direction and because MSHA did not provide the operator with any prior notice regarding MSHA's interpretation of the plan (i.e., returning to the original mining direction) the operator had not violated its plan.

Big Ridge Inc., 36 FMSHRC 999 (Apr. 2014) (ALJ Simonton)

MSHA alleged that the operator violated 30 C.F.R. Section 75.220(a)(1) by allowing its miners to operate in the "red zone." MSHA issued a Section 104(d)(2) S&S unwarrantable failure order with high negligence and a proposed penalty of \$53,858.00. MSHA's inspector responded to a hazard complaint that miners were "cable surfing." During his investigation, the inspector interviewed several miners which confirmed that they had observed miners working in the red zone and in fact "cable surfing."

At the hearing, the operator produced evidence that showed that management instituted a safety policy prohibiting "cable surfing" and that individual rank-and-file miners appeared to directly contradict the prohibition when management personnel were not present or in a position to readily observe them. Further testimony revealed that the operator had a zero-tolerance red zone policy and that this policy was discussed during daily safety meetings, annual refresher training,

and posters. Moreover, witnesses confirmed that a violation of this policy would subject miners to immediate termination. Based on this evidence ALJ Simonton reduced the negligence from high to moderate.

ALJ Simonton also removed the unwarrantable failure finding because the Secretary failed to establish that the operator was on notice that greater efforts were necessary for compliance. The Secretary failed to establish that MSHA had previously cited or warned the operator about red zone violations. Additionally, as set forth above, the operator had instituted prior abatement efforts in the form of a safety policy and safety meetings and previously terminated employees for violation of the red zone policy. Finally, the Secretary failed to produce any evidence that management was aware of the red zone violations prior to the hazard complaint. Based on these modifications, ALJ Simonton reduced the penalty from \$53,858.00 to \$35,000.00.

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