

Week of **May 25, 2015**

Judge Orders MSHA to Move Case Forward after Years' Delay

A Federal Mine Safety and Health Commission Administrative Law Judge has given the Mine Safety and Health Administration 90 days to decide how it intends to proceed based on its investigation of agents of a West Virginia coal mine operator or face dismissal of the civil penalty proceeding upon which the investigation is based.

Administrative Law Judge Jerold Feldman's patience with the agency's procrastination appears to have been exhausted in his May 4, 2015 order. He noted that approximately 38 months had elapsed from February 2, 2012, the date MSHA wrote four citations and an order against Spartan Mining Co., LLC's Road Fork #51 Mine in Wyoming County.

Spartan appealed MSHA's proposed six-figure fine, but the case was stayed in March 2014 after MSHA indicated it had begun an investigation of possible action under the Mine Act's Section 110(c). Section 110(c) allows MSHA to pursue penalties against agents of mine operators, such as directors and officers, when the agency concludes they have violated mandatory health or safety standards or have knowingly authorized or ordered such violations by others. However, since then, MSHA has not signaled its intention to pursue a 110(c) case or to drop its investigation.

Under the Mine Act (Section 105(a)), MSHA is required to act "within a reasonable time" to assess civil penalties after terminating an inspection or investigation. ALJ Feldman

referenced a 2013 decision in which the presiding judge opined that the "reasonable time" guidance in 105(a) should apply to 110(c) actions as well.

Feldman also noted that the agency itself recognized the need to act expeditiously. In its Program Policy Manual, MSHA states that Section 110(c) assessments should be issued within 18 months of the date the initial citations or orders were written. If that time period is exceeded, the case is to be turned over to an office within the agency that proposes special assessments. Thus, MSHA has failed to adhere to its own recommended guidelines.

In his order, Feldman said that, regardless of whether MSHA decides to initiate a 110(c) proceeding, the stay would be lifted and the current alleged violations scheduled for hearing. However, should MSHA not produce the results of its investigation within the 90 days, he would dismiss the case against Spartan "for failure to prosecute."

The company faces a total proposed penalty amount of \$113,762. Of this amount, a combined proposed fine of \$43,762 is being sought for four citations alleging that combustible materials were allowed to accumulate in violation 30 CFR §75.400, and an additional \$70,000 for allegedly maintaining incombustible content of rock dust contrary to §75.403.



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OSHA Alliance Issues Tank Gauging Hazard Alert

Following the deaths of nine workers over the past five years, including six in 2014, a group representing two federal government agencies and the oil and gas extraction and production industry has released an alert calling attention to hazards associated with tank gauging, sampling, and fluid transfer activities at oil and gas well sites.

According to the OSHA National STEPS Alliance, four fatalities occurred during gauging of crude oil tanks and five occurred during sampling of tank contents by pumpers or truckers. Most of the deaths occurred in North Dakota and Colorado, which experienced three each. In addition to the Occupational Safety and Health Administration, the National Institute for Occupational Safety and Health is represented on the Alliance.

The alert, available at http://www.nationalstepsnetwork.org/docs_tank_gauging/TankHazardInfographicFinal04_22_15.pdf, explains that opening thief hatches of storage tanks can lead to a rapid release of high concentrations of hydrocarbon gases and vapors. This, in turn, can result in very low oxygen levels and toxic and flammable conditions around and over the hatch.

Recent reports have documented fires or explosions. Workers also have described symptoms of dizziness,

fainting, headache, and nausea from inhalation of volatile petroleum hydrocarbons, according to the alert. However, by taking proper precautions, tank gauging, thiefing, and fluid handling can be performed safely, the alert states.

The document also outlines the responsibility of employers to conduct exposure and hazard assessments, provide proper training, and consider using engineering controls. Employers are advised to verify that sub-contractors follow proper safety procedures also. Employees, in turn, are instructed to follow their employers' safety procedures, wear appropriate personal protective devices, attend training, and watch out for potential ignition sources.

The poster reminds employees to stop work and ask questions if they are not certain how to perform a task safely or if they believe the job is unsafe.

The National STEPS Network is an association of regional exploration and production safety networks. The Network was founded in Texas in 2003 by OSHA and the industry to try and reduce fatalities and injuries there. It has grown to include 22 independent regional networks serving 20 producing states. The Alliance between OSHA, NIOSH, and the industry was formalized in December 2014.

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