Mine Safety and Health Administration Act Enforcement: Federal Appellate Court Addresses Application of Methane Safety Regulations

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The United States Court of Appeals for the D.C. Circuit ("Court") addressed in a June 16th decision certain Mining Safety and Health Administration ("MSHA") regulations. See *Peabody Midwest Mining, LLC v. Secretary of Labor, Mine Safety and Health Administration*, 2023 WL 4037358.

The regulations involve safety requirements that are triggered when certain amounts of methane are detected when mining underground.

MSHA is the federal administrative agency that enforces the Federal Mine Safety and Health Act. The agency prioritizes the health and safety of miners through regulatory standards, inspections, and citations.

The Federal Mine Safety and Health Review Commission ("Commission") is the independent entity that reviews and hands down citations.

MSHA issued two orders to coal mine operator Peabody Midwest Mining, LLC ("Peabody") and its agent, Michael Butler, for alleged violations. The violations are alleged to have occurred when exploratory drillers at Peabody's Francisco underground coal mine hit a pocket of gases.

Methane is stated to have blasted into the worksite in highly volatile concentrations. Mine manager Butler is stated to have ordered two workers to continue using an energized drill to attempt to plug the hole to stop the leak.

MSHA mandates that precautionary measures be employed during a methane leak. See 30 C.F.R. § 75.323(c)(2)(ii-iii). If 1.5% or more methane is present during a leak, three things must happen:

1. All workers must evacuate.
2. All equipment must be deenergized and shut down.
3. All work in the area must stop until there is a less than 1% concentration of methane in the air.

MSHA deemed Peabody's violations "unwarrantable failures." This is defined as "aggravated conduct beyond ordinary negligence." Mr. Butler and the workers were determined to have known there was too much methane in the air due to:

- Alerts from methane detectors on their persons
- The automatic shutdown of the drill when its methane sensor identified an unsafe amount in the air

Peabody admitted to failing to shut down electrical equipment. However, it put forth the following arguments before an Administrative Law Judge and the Commission:

- Safety standards were not violated by allowing work to continue to plug the hole.
- The orders should not have been designated an unwarrantable failure determination.
- Mr. Butler acted reasonably and in good faith and should not be held individually liable.

The Court first references the second MSHA requirement that is triggered when methane levels are too high. It states that all electric tools must be powered down. Despite Peabody's efforts to mitigate the leak, the company is not allowed to utilize a "greater-hazard" defense since an energized drill operated with such levels of methane could have caused a deadly explosion.

The Court then affirms the Commission's multifactor analysis that classified these violations as "unwarrantable failures." An unwarrantable failure is stated to involve:

. . . aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of the Act.

The deference provided to the ALJ in considering the various factors is discussed.

Peabody's good faith efforts to stanch the methane flow were acknowledged. However, it upheld he ALJ's determination such were not reasonable where:

. . . the violative conditions were highly dangerous, extensive, obvious, known, and of sufficient duration to constitute an unwarrantable failure.

Finally, the Court upholds the Commission's determination that Butler demonstrated "aggravated conduct" when he failed to prioritize employee safety. Corporate agents are liable under the Mine Act for a safety violation if they knowingly authorized, ordered, or carried out the violation.

The Court held:

While Butler acted in good faith to address the perceived methane hazard, taking what he believed to be the best course in an emergency situation, his belief in the safety of plugging the borehole was unreasonable. Multiple methane sensors alarmed and the drill shut itself down because methane had reached levels MSHA's regulations treat as posing extreme risk. Yet, Butler authorized the miners to keep working despite the danger. As the Commission recognized, "[b]y permitting miners to work with energized equipment, Butler risked incurring the very hazard section 75.323(c)(2) is intended to address, i.e., potential ignition [in a] high-methane environment.

A copy of the Decision can be downloaded here.