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Administrative Law Judge ruling in Sago mine explosion overturned by federal mine review commission

Decision regarding mine operator's failure to immediately report accident is reversed

ARLINGTON, Va. – The U.S. Department of Labor's Mine Safety and Health Administration announced today that the [Federal Mine Safety and Health Review Commission](#) has overturned a decision by Administrative Law Judge Jerold Feldman involving Wolf Run Mining Co.'s Sago Mine in Upshur County, W. Va., where 12 miners died in a massive explosion Jan. 2, 2006. The commission found that the mine operator's failure to notify MSHA and mine rescue teams immediately after the explosion involved unwarrantable failure and high negligence.

"Although eight years have passed, the memories of that tragic day have not diminished," said Joseph A. Main, assistant secretary of labor for mine safety and health. "We are grateful for the commission's decision in this case reaffirming the importance of immediate reporting of mine accidents."

Although the explosion occurred at 6:26 a.m. EST, MSHA was not contacted until 7:50 a.m., and efforts to reach a mine rescue team member at his home did not take place until 8:04 a.m. Consequently, MSHA issued a citation and order to the mine operator for failure to: immediately notify the agency of the explosion, comply with the mine's emergency evacuation and firefighting program, and immediately contact the mine rescue team.

Feldman concluded that commission case law permitted the operator a reasonable opportunity to investigate the event prior to being required to contact authorities. He also reasoned that the operator's negligence in not immediately reporting the incident was mitigated by mine management's wish to execute a rescue attempt and to not be barred from entering the mine. Feldman also took into account the fact that the event occurred on Jan. 2 (when the national holiday for New Year's Day was being observed) since Jan. 1 fell on a Sunday that year, so MSHA and state offices were closed, making it difficult to reach authorities.

On appeal, a two-member commission majority held, in agreement with MSHA, that the ALJ erred because he: (1) miscalculated the time at which the mine operator's duty to report commenced; (2) treated the intentional nature of the operator's failure to report as a mitigating factor; (3) treated the fact that the explosion occurred on a federal holiday as a mitigating factor; and (4) failed to consider the fact that, when the operator finally attempted to report the explosion, it relied solely on an off-site management official who had limited knowledge of the explosion and limited information and resources available to him at home. In addition to reinstating MSHA's unwarrantable failure and high negligence designations, the commission assessed the company with MSHA's proposed penalties of \$1,500 and \$13,000 for two separate citations.

"The operator's intention to assist underground personnel during this emergency, while admirable, is exactly the type of conduct that the [Federal Mine Safety and Health Act of 1977] and the Secretary's regulations are intended to address and avoid," wrote the commission majority. "The moments after a mining accident are difficult and frantic, but crucial to an effective response is strict adherence to an operator's emergency plan and to the relevant MSHA standards governing conduct after an accident occurs."

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In the Matter of: Secretary of Labor, Mine Safety and Health Administration v. Wolf Run Mining Company.
Docket Numbers: WEVA 2007-600 and WEVA 2008-247

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