

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 15, 2018

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

v.

PERFORMANCE CONTRACTING INC.,
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. WEST 2018-0339
A.C. No. 04-04075-461058

Mine: Permanente Cement Plant Quarry

DECISION

Appearances: Jessica M. Flores, Veronica Melendez, Office of the Solicitor, U.S. Department of Labor, San Francisco, California, for Petitioner

Jason J. Curliano, Laura Van Note, Buty & Curliano LLP, Oakland, California, for Respondent

Before: Judge Simonton

I. INTRODUCTION

This case is before me on a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration, pursuant to the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. §801.¹ This case involves two section 104(a) citations issued to Performance Contracting Inc. (“PCI” or “Respondent”) over the course of a routine multi-week inspection at the Permanente Cement Plant Quarry (“Quarry”).

A hearing was held on September 6, 2018, in San Jose, California. MSHA Inspector Julie Hooker and Lehigh Southwest Mine Company Safety Manager Eric Powell testified for the Secretary. PCI General Superintendent of Scaffolding Lee McFarlane and forklift operator Stephen Meneses testified for Respondent. The parties agreed to the following stipulations of fact in their prehearing statements:

¹ In this decision, the parties’ Joint Stipulations, the transcript, the Secretary’s exhibits, and Respondent’s exhibits are abbreviated as “Jt. Stip. #,” “Tr.,” “Ex. S-#,” and “Ex. R-#,” respectively.

1. The Federal Mine Safety and Health Review Commission (“Commission”) has jurisdiction over this proceeding under Section 105 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815 (the “Mine Act”).
2. Lehigh Southwest Cement Co., Permanente Cement Plant & Quarry, located in Cupertino, California, is a “mine” as that term is defined in Section 3(h)(1) of the Mine Act, 30 U.S.C. § 802(h)(1)(a).
3. Performance Contracting Inc., (“Respondent”) is an “independent contractor performing services” for Lehigh Southwest Cement Co., at the Permanente Cement Plant and Quarry and thus an “operator” as that term is defined in Section 3(d) of the Mine Act, 30 U.S.C. § 802(d).
4. Mine Safety & Health Inspector (“MSHI”) Jerry D. Hulsey acted in his official capacity as an Authorized Representative of the Secretary of Labor when he issued Citation Number 8991596.
5. MSHI Julie Hooker acted in her official capacity as an Authorized Representative of the Secretary of Labor when she issued Citation Number 9377099.
6. The citations that are the subject of this proceeding were properly served upon Respondent, as required by the Mine Act and were properly contested by Respondent.
7. Without Respondent admitting the propriety or reasonableness of the penalties proposed herein, the penalties proposed by the Secretary, if affirmed, would not impair Respondent’s ability to remain in business.
8. Respondent demonstrated good faith in abating the alleged violations.
9. At all times relevant to this proceeding, the Lehigh Southwest Cement Co., Permanente Cement Plant & Quarry mine produced products that entered into interstate commerce or had operations or products which affected interstate commerce within the meaning and scope of Section 4 of the Act.

See Jt. Stip. At hearing, the parties agreed to make closing arguments at the hearing in lieu of submitting post-hearing briefs. Based upon the parties’ stipulations and my review of the witness testimony and of the entire record, I make the following findings.

II. LEGAL PRINCIPLES

A. Establishing a Violation

The Commission has long held that “[i]n an enforcement action before the Commission, the Secretary bears the burden of proving any alleged violation.” *Jim Walter Res., Inc.*, 9 FMSHRC 903, 907 (May 1987); *Wyoming Fuel Co.*, 14 FMSHRC 1282, 1294 (Aug. 1992). The Commission has described the Secretary’s burden as:

The burden of showing something by a “preponderance of the evidence,” the most common standard in the civil law, simply requires the trier of fact “to believe that the existence of a fact is more probable than its nonexistence.”

RAG Cumberland Res. Corp., 22 FMSHRC 1066, 1070 (Sept. 2000); *Garden Creek Pocahontas Co.*, 11 FMSHRC 2148, 2152 (Nov. 1989).

The Secretary may establish a violation by inference in certain situations. *Garden Creek Pocahontas Co.*, 11 FMSRC at 2153. Any such inference, however, must be inherently reasonable, and there must be a rational connection between the evidentiary facts and the ultimate fact inferred. *Mid-Continent Res.*, 6 FMSHRC 1132, 1138 (May 1984).

If the Secretary has established facts supporting the citation, the burden shifts to the Respondent to rebut the Secretary’s prima facie case. *Construction Materials*, 23 FMSHRC 321, 327 (March 2001) (ALJ).

B. Significant and Substantial

A violation is significant and substantial (S&S), “if based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature.” *Cement Division, National Gypsum Co.*, 3 FMSHRC 822, 825 (Apr. 1981).

In order to uphold a citation as S&S, the Commission has held that the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard—that is, a measure of danger to safety—contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature. *Mathies Coal Co.*, 6 FMSHRC 1, 3–4 (Jan. 1984).

The Commission has held that the second element of the *Mathies* test addresses the extent to which a violation contributes to a particular hazard. *Newtown Energy, Inc.*, 38 FMSHRC 2033, 2037 (Aug. 2016). Analysis under the second step should thus include the identification of the hazard created by the violation and a determination of the likelihood of the occurrence of the hazard that the cited standard is intended to prevent. *Id.* at 2038. At the third step, the Secretary must prove there was a reasonable likelihood that the hazard contributed to by the violation will cause an injury, not a reasonable likelihood that the violation, itself, will cause injury. *West Ridge Resources, Inc.*, 37 FMSHRC 1061, 1067 (May 2015) (ALJ), citing *Musser Eng'g, Inc.*, 32 FMSHRC 1257, 1280–81 (Oct. 2010). Evaluation of the four factors is made assuming continued normal mining operations. *U.S. Steel Mining Co.*, 6 FMSHRC 1573, 1574 (July 1984).

C. Negligence

Under the Mine Act, operators are held to a high standard of care, and “must be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices.” 30 C.F.R. § 100.3(d). The Mine Act defines reckless disregard as conduct which exhibits the absence of the slightest degree of care, high negligence as actual or constructive knowledge of the violative condition without mitigating circumstances; moderate negligence as actual or constructive knowledge of the violative condition with mitigating circumstances; and low negligence as actual or constructive knowledge of the violative condition with considerable mitigating circumstances. 30 C.F.R. § 100.3: Table X.

The Commission and its judges are not bound to apply the part 100 regulations that govern MSHA’s determinations addressing the proposal of civil penalties. *Newtown Energy, Inc.*, 38 FMSHRC 2033, 2048 (Aug. 2016), citing *Brody Mining, LLC*, 37 FMSHRC 1687, 1701–03 (Aug. 2015). The Commission instead employs a traditional negligence analysis, assessing negligence based on whether an operator failed to meet the requisite standard of care. *Brody*, 37 FMSHRC at 1702. In doing so the Commission considers what actions a reasonably prudent person familiar with the mining industry, the relevant facts, and the protective purpose of the regulation, would have taken under the same circumstances. *Id.* Commission judges are thus not limited to an evaluation of mitigating circumstances but may instead consider the totality of the circumstances holistically.” *Id.*; see also *Mach Mining*, 809 F.3d 1259, 1264 (D.C. Cir. 2016).

D. Penalty

It is well established that Commission administrative law judges have the authority to assess civil penalties de novo for violations of the Mine Act. *Sellersburg Stone Company*, 5 FMSHRC 287, 291 (March 1983). The Act requires that in assessing civil monetary penalties, the Commission ALJ shall consider the six statutory penalty criteria:

- (1) the operator’s history of previous violations,
- (2) the appropriateness of such penalty to the size of the business of the operator charged,
- (3) whether the operator was negligent,
- (4) the effect on the operator’s ability to continue in business,
- (5) the gravity of the violation, and
- (6) the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

30 U.S.C. § 820(i).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Lehigh Southwest Mine Company owns and operates the Permanente Cement Plant Quarry (“Quarry”) located in Cupertino, California. PCI is an independent contractor that provides year-round scaffolding construction and moving services throughout the Quarry. Tr. 51, 61. PCI provides a significant amount of additional scaffolding during the Quarry’s

“shutdown period,” wherein the Quarry closes for a couple of weeks each year to perform extensive maintenance. Tr. 50-51, 61. PCI stores the extra scaffolding in select areas across the mine to allow for easier transport. Tr. 61, 75. On January 23, 2018, during one such shutdown period, MSHA Inspectors Jerry Hulsey, Julie Hooker, and Jason Geno arrived at the Quarry to conduct a routine inspection. Tr. 16, 51. The inspectors thereafter separated to inspect different areas of the Quarry. Tr. 20.

A. Citation No. 8991596

On January 23, 2018, Inspector Jerry Hulsey began his inspection of the preheating tower accompanied by Quarry Safety Manager Eric Powell.² Tr. 52. Hulsey noticed a pile of refractory material that lay partially on top of stored scaffolding equipment on the sixth floor of the tower. Ex. S-2. The material measured approximately two feet high and three to four feet wide, and was taped off and tagged by Lone Star, another contractor performing services at the tower. Ex. R-A; S-2; Tr. 53, 64-65. Powell and Hulsey also observed footprints in the material, though neither reportedly observed any miners in the area. Tr. 54, 62. According to Powell, Hulsey concluded that the scaffolding stored in the area indicated that PCI was working there and was responsible for the buildup. Tr. 53-54, 62. Hulsey issued Citation No. 8991596, which alleged:

There is a build-up of material in the passageway at the scaffolding staging area on the 6th floor of the pre-heat tower, creating a lost (*Sic.*) of footing hazard. The uneven sloped material build-up is about 5 feet long ranging from 2 inches high to 30 inches high. This condition is behind an area that has red colored danger tape around it with a sign warning of the tripping hazards. There are numerous foot prints noted going up and over the build-up material. Miners accessed this area to store scaffolding material.

Ex. S-1. Hulsey designated the citation S&S, reasonably likely to result in lost workdays or restricted duty, and the result of Respondent’s low negligence. The Secretary assessed a penalty of \$118.00.

PCI challenges the fact of violation and the Secretary’s S&S and negligence designations. PCI argues that the Secretary is unable to meet his burden of proof because Inspector Hulsey did not testify as to his reasoning for issuing the citation to PCI. It contends that the evidence does not prove that PCI’s employees created the alleged violation or were in the area at the time of the inspection. Tr. 109. PCI instead argues that the condition was created by Lone Star. Tr. 64-65, 109.

² Eric Powell is the Safety Manager for the Lehigh Southwest Mine Company. Tr. 49. His responsibilities include ensuring all employees are properly trained on safety and accident and injury prevention, and to accompany MSHA and OSHA during inspections. *Id.*

1. The Violation

30 C.F.R. § 56.20003(a) requires that “[w]orkplaces, passageways, storerooms, and service rooms shall be kept clean and orderly” at all mining operations. The Secretary must establish that (1) the cited area is a “workplace,” “passageway,” “storeroom,” or “service room,” and (2) the area is not being kept clean and orderly. See *Tim M. Ball, employed by Mountain Materials, Inc.*, 38 FMSHRC 1799, 1808 (July 2016) (ALJ); *Ames Construction*, 37 FMSHRC 536, 540 (Mar. 2015) (ALJ).

The photographs clearly show that the sixth floor area was a workplace and storage area that was not kept clean and orderly. Ex. S-2. The buildup of material was located where scaffolding is stored and where miners travel, measured approximately two feet high, and consisted of a plank that created a tripping hazard. Ex. S-2; Tr. 64-65. However, the photographic evidence and testimony do not prove that PCI’s employees generated the pile or were even in the area at the time of the inspection. Inspector Hulsey was not present at the hearing and did not testify as to how he concluded that PCI was working in the area at the time, that the footprints belonged to a PCI employee, or why Lone Star was not responsible for creation or maintenance of the condition.

The Secretary contends that Hulsey rationally inferred PCI’s culpability based on the scaffolding equipment stored on the sixth floor and the footprints through the buildup. Tr. 104-05. However, the Secretary does not provide sufficient evidence to place any PCI employees on the sixth floor of the preheating tower on the day of the alleged violation. Powell testified that he did not see any PCI employees during the inspection, and that Hulsey did not see or talk to any other employee while Powell was in his presence. Tr. 62. Lee McFarlane, PCI’s general superintendent of scaffolding, testified that PCI stored scaffolding yards on the third floor and the sixth floor of the preheated towers to assure ease of access and movement of equipment. Ex. R-B; Tr. 74-76. He verified time and material reports that show PCI’s employees only worked on the third floor of the preheating tower on January 23, and thus likely used the third floor storage cache instead of climbing multiple stairways to access the sixth floor cache. Ex. R-C; Tr. 83. The photographs support McFarlane’s testimony, as they show that the refractory material is piled high on top of and against the scaffolding, indicating the housekeeping issue developed well after the scaffolding on the sixth floor was moved. Ex. S-2.

The evidence also strongly supports Respondent’s claim that the refractory pile was generated and taped off by Lone Star on the day of the inspection. The Secretary did not produce any evidence suggesting that PCI’s services generated refractory material, and Powell unequivocally stated PCI’s work at the Quarry did not produce such material. Tr. 60. He stated that Lone Star likely generated the refractory material through its work in the tower. Tr. 60-61. Moreover, the tag on the tape surrounding the buildup read “Lone Star” and was dated January 23, thereby supporting the assertion that Lone Star taped off the area on the day of the inspection. Ex. R-A; Tr. 64-65. Since Lone Star generated the refractory material and was working near the sixth floor at the time, I find it reasonable to infer that Lone Star caused the condition and one of its employees created the footprints while taping off the area.

The Secretary points to this court's decision in *NALC, LLC*, 40 FMSHRC 779 (May 2018) (ALJ), to argue that photographs of footprints are sufficient to infer that an operator committed a housekeeping violation, even if the inspector did not personally observe a miner walking in the area. Tr. 105. In that case, the court deferred to the Inspector's credible testimony that footprints on a stairway covered in loose material belonged to a miner rather than a third party trespasser. 40 FMSHRC at 785. The Inspector testified that miners frequently traveled in that area during operation hours and that the Foreman told him that he previously instructed miners to clean the area. *Id.* The court found that the Inspector's inference was reasonable even though he could not be absolutely certain who made the footprints, and rejected the operator's contention that a third party trespasser created the footprints because it presented no evidence to support that theory. *Id.*

Unlike in *NALC*, Inspector Hulsey did not testify as to why he concluded that PCI was responsible for the housekeeping violation in light of ample evidence suggesting that Lone Star worked in the area and taped off the pile of refractory material. The Secretary's other witnesses were unable to support Hulsey's reasoning. Tr. 46, 64-65. Inspector Hooker was not present during the inspection and had no firsthand knowledge of the condition beyond the photographs and what she heard in the post-inspection conference. Tr. 20, 46. Although Powell accompanied Hulsey during the inspection and personally observed the alleged violation, he could not speak to Hulsey's reasoning in light of the facts implicating Lone Star. Tr. 60. The photographs of the footprints here thus do not justify the same logical inference made in the *NALC* case, given the clear evidence of Lone Star's activity above and near the housekeeping violation. Absent Hulsey's testimony, the court cannot rationally infer that PCI violated the standard.

Accordingly, I vacate the citation and do not address the Secretary's gravity, negligence, or penalty designations.

B. Citation No. 9377099

On January 31, 2018, Inspector Julie Hooker³ conducted an inspection at the finish mill area of the mine, accompanied by Eric Powell. Tr. 22. The finish mill area was busy with activity, and Hooker observed foot traffic in the area during her inspection, as well as foot and vehicle traffic in the area the week prior. Tr. 24-25, 27. While in the nearby pump house building, Hooker noticed a Genie telehandler ("forklift") reverse without the activation of an audible backup alarm. Tr. 23. The forklift measured about 6 feet 4 inches in height, weighed approximately 10 tons, and was transferring scaffolding material a distance of approximately 20 feet onto a truck. Tr. 23, 25, 27, 93. Hooker approached the forklift, identified herself to the driver, and tested the backup alarm twice manually. Tr. 24. The alarm failed to activate during either test. *Id.* Stephen Meneses, the forklift operator, informed Hooker that he was aware that

³ Inspector Hooker has served as an MSHA Inspector since November 2012. Tr. 15. She spent 25 years in the military performing health and safety inspections on mobile equipment and buildings. *Id.* She conducted safety meetings and ensured compliance with federal safety regulations. *Id.* She also performed similar work for the United States Agricultural Research Service and Forest Service prior to starting with MSHA. *Id.*

the backup alarm was not working for a couple of days, but that he had not reported it to his supervisor. Tr. 27-28. She issued Citation No. 9377099, which alleged:

The automatic reverse-activated signal alarm on the Genie GH-5519 forklift located on the mine was not maintained in functional condition. The alarm to indicate the forklift was in reserve (Sic.), failed to activate when tested. Foot and vehicle traffic was observed in the area. This condition exposes miners working or traveling around this condition to a crushing standard.

Ex. S-4. Inspector Hooker designated the citation S&S, reasonably likely to result in a fatality, and the result of Respondent's moderate negligence. *Id.* PCI quickly called the company from which it rented the vehicle to repair the backup alarm and terminate the citation. Tr. 40-41, 85. The Secretary assessed a penalty of \$638.00.

PCI challenges the Secretary's S&S and negligence designations. PCI contends that the violation is not S&S because no miners were working near the forklift. Tr. 111. It argues that the forklift operator did not see any other individual in the vicinity of the forklift and contends that Inspector Hooker was unable to give an exact measurement as to the nearest miners in order to justify the S&S designation. *Id.* PCI disputes the moderate negligence designation because the operator only drove the forklift for ten to fifteen minutes, covered a short distance, and honked the horn prior to backing up. Tr. 110-111.

1. The Violation

30 C.F.R. § 56.14132(a) provides that “[m]anually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety feature shall be maintained in functional condition.” The Commission has defined “maintain” in the context of this standard to require that horns or audible warning devices must function at all times unless the equipment has been taken out of service for repair. *Beverly Materials, LLC*, 37 FMSHRC 1857, 1858 (Sept. 2015) citing *Wake Stone Corp.*, 36 FMSHRC 825, 827 (Apr. 2014). The standard therefore “imposes a continuing responsibility on operators to ensure that safety alarms do not fall into a state of disrepair.” *Wake Stone Corp.*, 36 FMSHRC at 827.

The parties do not dispute that the forklift was in operation and that its back-up alarm did not work at the time of the inspection. Tr. 110. Inspector Hooker observed the forklift reverse without any alarm function activating. Tr. 24. Powell did not hear an alarm, and Meneses acknowledged that the alarm was inoperable. Tr. 23, 98. The alarm also failed to work twice when Inspector Hooker manually tested the system. Tr. 24. Since the forklift was in service and the backup alarm failed to function, I affirm the fact of violation. *See Wake Stone Corp.*, 36 FMSHRC at 827.

2. Significant and Substantial

Inspector Hooker designated the citation as S&S and reasonably likely to be fatal. I have already found that PCI violated § 56.14132(a), thereby satisfying the first element of the *Mathies* test.

In regards to the second *Mathies* element, the Secretary must demonstrate the reasonable likelihood of the occurrence of the hazard that § 56.14132(a) is designed to prevent. *Newtown Energy, Inc.*, 38 FMSHRC at 2037. Section 56.14132(a) imposes a continuing responsibility upon operators to ensure that audible safety alarms work at all times to prevent individuals or other vehicles from being struck by reversing equipment without warning. *Rock Products, Inc.*, 40 FMSHRC 808, 820 (May 2018) (ALJ). I find that that the non-functional backup alarm was reasonably likely to contribute to the forklift's accidental contact with a miner or other equipment. The forklift was performing work that required reversing the vehicle in a busy area of the mine. Tr. 25, 27. Inspector Hooker observed miners approximately 50 to 75 feet away walking toward the forklift while it was in operation. Tr. 34. The alarm was inoperable for at least two days. Tr. 27-28. PCI's failure to maintain the forklift's backup alarm therefore contributed to the reasonable likelihood that miners traveling through the finish mill area on foot or in a vehicle would be struck by the reversing forklift without any warning.

I reject PCI's contention that the violation was not likely to contribute to the collision hazard because the inspector could not provide the exact distance of the nearest miners to the forklift. An exact measurement of the distance from the forklift to the nearest miner on foot is not necessary to demonstrate that the broken backup alarm contributed to the reasonable likelihood of a miner being accidentally struck by the vehicle. I credit Inspector Hooker's testimony that the miners were walking nearby and that she also observed miners traversing the finish mill area the week prior to her inspection. Tr. 27-28. The Secretary has met his burden of proof for the second *Mathies* element.

To satisfy the third *Mathies* element, the Secretary must show that the hazard was reasonably likely to result in an injury. *Newtown*, 38 FMSHRC at 2038. The Secretary argues that hazard of inadvertent contact with individuals or vehicles was reasonably likely to occur given the size of forklift and how busy the finish mill area was in the context of continued mining operations. Tr. 25, 27-28. The forklift weighed close to a ton and was operating in an area where miners frequently worked and traveled. Assuming the hazard has been realized, a collision between the forklift and any miner on foot or driving a similarly sized vehicle was likely to result in injuries. Tr. 27. The Secretary has therefore met the minimum threshold for proving the third element of the *Mathies* test.

Regarding the fourth *Mathies* element, the Secretary must show that the injury resulting from the hazard is reasonably likely to be serious. *Newtown*, 38 FMSHRC at 2038. Here, Hooker credibly testified that the size and weight of the forklift would likely lead to fatal blunt force crushing, breaking or trauma injuries were a miner to be struck by the reversing vehicle. Tr. 27. I credit Hooker's testimony and find that any injury resulting from the hazard could reasonably likely lead to fatal injuries.

For the reasons above, I affirm the Secretary's S&S and gravity determinations.

3. Negligence

I find that the violation was the result of PCI's moderate negligence. The forklift was in operation and the backup alarm was not functional. Tr. 23. Meneses admitted at the inspection

and again at hearing that he was aware that the alarm was not functional for at least two days but that he did not report the defect to a supervisor until he received the citation. Tr. 27-28, 99. Although Respondent claims that Meneses was only operating the vehicle for a short period on the day of the violation, his decision not to notify management and to continue operating the forklift without a functional backup alarm indicates that at least one PCI employee knew of the condition but failed to address it.

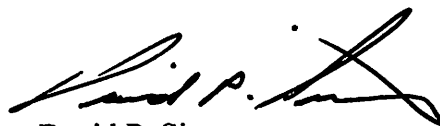
Although Meneses testified that he could clearly see out of the rear of the forklift and that he honked the horn twice prior to reversing in compliance with PCI's operation policy, I do not find that this is a mitigating factor meriting a reduction from moderate negligence. Meneses and Hooker offer conflicting testimony as to the forklift's rear visibility. Hooker testified that at the very least, a blind spot exists on the right rear side of the forklift when the boom is up. Tr. 25, 26. Even assuming that the blind spot was minimal or nonexistent and that the operator diligently honked prior to reversing, these measures would not adequately warn other miners or vehicles driving by while the forklift was actively reversing to use caution in the area. I affirm the moderate negligence designation.

4. Penalty

The Secretary proposed a penalty of \$638.00. PCI's history of previous violations is low, and the parties stipulated that the Secretary's proposed penalty amount is consistent with the violation and would not affect PCI's ability to remain in business. *See* Jt. Stip. 7. I found that the violation was S&S and reasonably likely to result in a fatal injury and the result of PCI's moderate negligence. Respondent took immediate steps to terminate the citation by contacting a third party from which it rented the forklift to fix the faulty wire. Tr. 40-41, 85. Accordingly, I affirm the penalty of \$638.00.

IV. ORDER

The Respondent, Performance Contracting Inc., is hereby **ORDERED** to pay the Secretary of Labor the total sum of **\$638.00** within 30 days of this order.⁴



David P. Simonton
Administrative Law Judge

⁴ Payment should be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P. O. BOX 790390, ST. LOUIS, MO 63179-0390.

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