

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
721 19th St. Suite 443
Denver, CO 80202-2500
TELEPHONE: 303-844-5266 / FAX: 303-844-5268

December 12, 2018

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

v.

CACTUS CANYON QUARRIES, INC.,
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. CENT 2018-0243
A.C. No. 41-00009-460832

Mine: Fairland Plant & Qys

DECISION

Appearances: Christopher D. Lopez-Loftis, Office of the Solicitor, U.S. Department of Labor,
Dallas, Texas, for Petitioner;

Andy Carson, Marble Falls, Texas, for Respondent.

Before: Judge Simonton

I. INTRODUCTION

This case is before me upon the Secretary’s petition for assessment of civil penalty filed in accordance with the provisions of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. §801 *et. seq.*¹ The case involves two section 104(a) citations issued to Cactus Canyon Quarries, Inc. (“CCQ” or “Respondent”) for a total penalty of \$236.00.

A hearing was held on September 13, 2018, in San Antonio, Texas. MSHA Inspector William Bonneau testified for the Secretary. Quarry owner Andy Carson and CCQ miner Jesus Garcia testified for the Respondent. The parties agreed to the following stipulations of fact:

1. The Cactus Canyon Quarries, Inc. Fairland Plant & Qys is a mine as defined under Section 3(h) of the Mine Act.
2. The Southern Aggregates Plant 9 is subject to the Federal Mine Safety and Health Act of 1977.

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.

3. The Respondent is subject to the jurisdiction of the Federal Mine Safety and Health Review Commission and the presiding administrative law judge has the authority to hear the case and decision.
4. At all times relevant to these proceedings, the products of the subject mine entered commerce, or the operations or products thereof affected commerce, within the meaning and scope of Section 4 of the Mine Act, 30 U.S.C. § 803.
5. Copies of the citation in contest are authentic and a copy was served on the Respondent by an Authorized Representative of the Secretary employed by the Mine Safety and Health Administration.
6. The individual whose signature appears in Block 22 of the contested citation at issue in this proceeding is an Authorized Representative of the United States of America's Secretary of Labor, assigned to MSHA, and was acting in his official capacity when issuing the citation at issue in this proceeding.
7. The Respondent timely contested the violation.
8. The Respondent abated the citation timely and in good faith.

See Jt. Stip; Ex. S-7. In addition, the parties stipulated at hearing that CCQ had not been cited for broken brake lights or headlights in the past. Tr. 139-40. Based upon the parties' stipulations and my review of the witness testimony, the entire record, and the parties' post-hearing briefs, 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. 30 C.F.R. § 56.14100(b)

30 C.F.R. § 56.14100(b) provides “[d]efects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.” The language of section 56.14100(b) is “simple and brief in order to be broadly adaptable to myriad circumstances.” *Palmer Coking Coal Co.*, 22 FMSHRC 887, 891 (July 2000) (ALJ). A violation of the standard requires a finding that (1) there was a defect in the equipment, (2) the cited defect affected safety and (3) the defect was not corrected in a timely manner to prevent the creation of a hazard. *Meyer Aggregate LLC*, 38 FMSHRC 2596, 2605 (Oct. 2016) (ALJ). Whether a defect is repaired in a timely manner depends on “when the defect occurred and when the operator knew or should have known of its existence.” *Northern Ill. Serv. Co.*, 37 FMSHRC 1514, 1538 (July 2015) (citing *Lopke Quarries, Inc.*, 23 FMSHRC 705, 715 (July 2001)).

C. Fair Notice

The Secretary must provide fair notice of the requirements of broadly written safety standards. *See Sunbelt Rentals Inc.*, 38 FMSHRC 1619, 1626 (July 2016); *see also Alabama By-Products Corp.*, 4 FMSHRC 2128, 2130 (Dec. 1992); *Kerr-McGee Corp.*, 3 FMSHRC 2496, 2497 (Nov. 1981). The Commission has consistently applied the objective reasonably prudent person standard to resolve issues of notice. *Id.* at 2125. That test examines whether a “reasonably prudent person familiar with the mining industry and the protective purposes of the standard would have recognized the specific prohibition or requirement of the standard.” *Ideal Cement Co.*, 12 FMSHRC 2409, 2416 (Nov. 1990). The Commission looks to a wide array of factors in making that inquiry, including the text of the regulation, its placement in the overall regulatory scheme, its regulatory history and purpose, the consistency of the agency's enforcement, whether MSHA has published notices informing the regulatory community of its interpretation, and whether the operator would have been aware of the requirement of the standard because of past case precedent. *See Sunbelt Rentals*, 38 FMSHRC at 1627.

D. Gravity

The gravity penalty criterion under § 110(i) of the Mine Act, 30 U.S.C. § 820(i), “is often viewed in terms of the seriousness of the violation.” *Consolidation Coal Co.*, 18 FMSHRC 1541, 1549 (Sept. 1996) (citing *Sellersburg Stone Co.*, 5 FMSHRC 287, 294-95 (Mar. 1983), *aff'd*, 736 F.2d 1147) (7th Cir. 1984); *Youghiogheny & Ohio Coal Co.*, 9 FMSHRC 673, 681 (Apr. 1987). An analysis of gravity focuses on the likelihood of injury, the severity of an injury if it occurs, and the number of miners potentially affected, and must be considered assuming

continued normal mining operations without abatement of the violation. *U.S. Steel Mining Co.*, 7 FMSHRC 1125, 1130 (Aug. 1985).

E. 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).

F. 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

The Fairland Plant & Qys (“Quarry”) is an aggregate mine located in Marble Falls, Texas, owned and operated by Cactus Canyon Quarries. On January 30, 2018, MSHA Inspector William Bonneau inspected the Quarry and issued the two citations challenged here.² Both citations allege violations of 30 C.F.R. § 56.14100(b) for non-functioning brake lights on a service truck and for broken or missing headlights and brake lights on four haul trucks, respectively.³

CCQ argues that both citations should be vacated. CCQ contends that the language of § 56.14100(b) does not explicitly require vehicles to have functional headlights and brake lights at all times. Respondent’s Post-Hearing Brief (“Resp. Br.”) at 1-2. Rather, liability under § 56.14100(b) depends on the conditions at the mine in reasonably determining what constitutes a defect affecting safety. *Id.* CCQ argues that the Quarry’s low traffic flow and restriction of operations to daytime and optimal weather ensure that the broken and missing lights on the various trucks do not affect safety. Resp. Br. at 2-3; Tr. 20-21, 119, 121. Finally, CCQ argues that it was not given fair notice by MSHA that broken headlights or brake lights on equipment violated § 56.14100(b). Respondent’s Reply Brief (“Resp. Rep.”) at 5.

A. The Violations

Citation No. 9359738

On January 30, 2018, Inspector Bonneau arrived at the Quarry to conduct a routine inspection. Tr. 25. In accordance with company policy, CCQ’s sales manager shut down all Quarry operations upon Bonneau’s arrival so that the miners could accompany the inspection. Tr. 25, 28, 54. Bonneau began his inspection with a white F-150 service pickup truck located near the shop. Tr. 30-31, 35. He asked the accompanying miners to test the truck and discovered that the brake lights failed to function. Tr. 30-31, 35. The miners told Bonneau that the lights worked previously but that they were uncertain how long they had not worked. Tr. 31-32. Bonneau issued Citation No. 9359738, which alleged:

A defect affecting safety was present and had not been corrected in a timely manner. The brake lights on the white shop/service truck did not function when tested. The truck is used throughout the mine site as needed to service the plants and mobile equipment. This condition exposes the driver to serious injuries in the event a rear-end collision occurs while operating the truck throughout the mine

² William Bonneau has worked as an MSHA inspector for three years. Tr. 22. He completed all required inspector training at the Mine Academy in Beckley, West Virginia, and conducts an average of 75 inspections annually. Tr. 23. Prior to MSHA, Bonneau served as safety engineer at Sherwin Alumina in Gregory, Texas for eight years. Tr. 23.

³ Section 56.14100(b) states “[d]efects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.” 30 C.F.R. § 56.14100(b).

site. The lights are a safety feature which should be maintained in functional condition.

Ex. S-1. Bonneau designated the citation non-S&S, unlikely to result in lost workdays or restricted duty, and the result of Respondent's moderate negligence. *Id.* Respondent terminated the violation by replacing a fuse. Ex. S-1; Tr. 37. The Secretary assessed a penalty of \$118.00.

I affirm the violation. There is no dispute that the brake lights on the service truck did not activate when Bonneau and the miners tested them. Ex. S-2; Tr. 31, 125. The defective brake lights also affected safety at the Quarry. Inspector Bonneau testified that brake lights function as a signaling device from the miner driving the truck to other nearby vehicles or miners.⁴ Tr. 33-34. The broken brake lights clearly affect the safety of the truck because vehicles travelling behind the truck will be unable to discern when it is slowing down or coming to a stop and bears the risk of a rear-end collision.

CCQ was aware that the brake light did not work for an extensive period of time and did not replace it. Although miners on site were unsure how long the lights were inoperable, Garcia testified that he was aware the brake lights had been out for quite some time, possibly years. Tr. 128-29. When asked why they did not repair the brake lights, both Carson and Garcia testified that CCQ did not pay attention to the matter because they believed functional brake lights to be unnecessary during operating hours. Tr. 128-29. I find that CCQ operated the truck without working brake lights and therefore created a hazard to other persons on the mine site.

CCQ contends that the Secretary cannot prove the defective brake lights created a safety hazard because Inspector Bonneau did not see the truck in operation in conditions where brake lights would be necessary. Resp. Br. at 2-3. It argues that the Quarry is small, does not have a high volume of traffic, and does not operate at night or in bad weather. Resp. Br. at 2. CCQ therefore maintains that the Secretary cannot prove that the inoperable brake lights affected safety at the mine site.

As an initial matter, CCQ's arguments as to the conditions in which the mine operates relate to the gravity determination of likelihood rather than to the fact of violation. *See Walker Stone Co.*, 20 FMSHRC 1218, 1225-26 (Oct. 1998) (ALJ). Defective brake lights affect safety at any time in which vehicles are moving about the mine site. Even attentive drivers operating in

⁴ CCQ contends that Inspector Bonneau was not an expert witness and therefore did not have the qualifications necessary to testify as to what constituted a defect and what created a hazard to persons under the standard. Resp. Br. at 2-3. Respondent has made this argument before to no avail. *See Cactus Canyon Quarries of Texas*, 23 FMSHRC 280, 286 (Mar. 2001) (ALJ). In denying CCQ's motion to exclude parts of an inspector's testimony as improper expert testimony, the ALJ in that case held that the conclusions of MSHA Inspectors based on personal observations of what they believe to be violations of mandatory safety standards are not opinions based on scientific, technical, or other specialized knowledge that require an expert. *Id.* The same is true here. Bonneau testified to his personal observation of the truck's broken brake lights, his conversations with miners at the site regarding its operations, and why he believed that the inoperable brake lights violated the standard.

clear conditions with little traffic may encounter another vehicle and fail to discern whether it plans to slow down or stop without working brake lights.

It follows that Inspector Bonneau need not have personally observed the truck in operation to conclude that the defective brake lights created a safety hazard.⁵ Inspectors may make inferences regarding violations so long as a rational connection exists between the evidentiary facts and the ultimate fact inferred. *Mid-Continent Res.*, 6 FMSHRC 1132, 1138 (May 1984). Bonneau determined that the mine was in operation when he arrived to conduct his inspection and gathered through his discussions with miners at the site that multiple vehicles, including the service truck, operated on the site at once. Tr. 60-61. He was not informed that the truck was tagged out or never used, and thus logically concluded that it operated without functional brake lights. The court credits his inference from these facts that the truck's inoperable brake lights affected safety.

The Secretary has proven the violation.

Citation No. 9359739

Inspector Bonneau continued his inspection the following day, this time accompanied by Quarry owner Andy Carson. Tr. 40-41. Bonneau discovered that the headlights and brake lights on four haul trucks were either out or missing. Ex. S-4, S-6; Tr. 40. The miners again claimed that the lights had worked on previous occasions but could not determine how long ago. Tr. 41. Carson believed that the lights may have broken soon after he purchased the trucks. Tr. 143. Bonneau issued one citation for the missing and broken lights on all four trucks. Tr. 45-46. The citation alleged:

Defects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons. The front headlights and brake lights on the dump trucks (#3; 303; 24 and 4) did not function when tested. The trucks are used throughout the mine site to haul material from the stock pile to the crushing plants and to transport material from the railroad haulage cars. This condition exposes the driver to serious injuries in the event a collision occurs while operating the truck throughout the mine site. The headlights and brake lights are a safety feature which should be maintained in functional condition.

Ex. S-3. Bonneau designated the citation non-S&S, unlikely to result in lost workdays or restricted duty, and the result of Respondent's moderate negligence. *Id.* CCQ terminated the citation by replacing the fuses and bulbs on each of the trucks. Tr. 48-49. The Secretary assessed a penalty of \$118.00.

⁵ The court again notes that Bonneau was unable to observe the Quarry at work because Respondent shut down all operations upon Inspector Bonneau's arrival for the inspection. Tr. 25, 28, 54.

I affirm the fact of violation for the same reasons discussed above. The parties do not dispute that headlights and brake lights on the haul trucks were either not functional or missing completely. Ex. S-6; Tr. 40, 115, 125-27, 143-45. The Secretary has offered a number of pictures of each truck that support the citation. Ex. S-4; S-6; Tr. 44. Exhibits S-4 and S-6 clearly show haul trucks missing brake lights. Inspector Bonneau also identified three trucks in Exhibit S-6 that had inoperable headlights. Tr. 44-45. Three or four haul trucks travel through Plant 1 and about five proceed through Plant 2 each day. Tr. 107. The two plants run simultaneously for approximately one third of the Quarry's operating time. Tr. 117.

As discussed *supra*, broken and missing brake lights are a defect that affects safety at mine sites because any vehicle traveling behind a haul truck would not realize that it needed to stop or slow down. I find that defective headlights pose a similar safety hazard because oncoming vehicles may not be able to see trucks approaching or rounding a corner without operable headlights. Inspector Bonneau testified that the presence of fog on the second day of the inspection increased the safety hazard because miners would be unable to see vehicles coming around corners and up narrow roads between warehouses. Tr. 46-47, 147. Although CCQ disputes that it operates in inclement weather, weather can change quickly and impede operators' visibility of oncoming traffic. *See Walker Stone Co.*, 20 FMSHRC at 1226. In those situations, defective headlights affect safety because other miners may have trouble seeing a haul truck approach.

Again, CCQ was aware of the condition for an extended period of time and did not address the defects. Garcia and Carson both testified that CCQ was aware that its haul trucks did not have working headlights and brake lights, and that some of the trucks never had lights. Tr. 126-27; 143-45.

The Secretary has proven a violation.

B. Fair Notice

Respondent contends that it did not receive fair notice that broken brake lights or headlights constituted defects affecting safety in violation of the standard because previous MSHA inspectors have never cited the condition at the Quarry and because it knows of no written interpretation that § 56.14100(b) requires vehicles to repair defective headlights and brake lights. Resp. Rep. at 5; Tr. 139-140.

That CCQ has not been cited in the past does not excuse it from understanding that defective headlights and brake lights affect safety and must be repaired in a timely manner. "MSHA cannot be estopped from enforcing its regulations simply because it did not previously cite the mine operator." *Oil-Dri Production Co.*, 40 FMSHRC 876, 941 (June 2018) (ALJ) (citations omitted) (rejecting Respondent's argument that it lacked fair notice because at least 14 inspections over seven years failed to express concerns regarding the violative condition).

CCQ relies upon the U.S. District Court's memorandum opinion in *Bevins v. Apogee Coal Co.*, No. 2:13-cv-24264, 2014 WL 7236415 (S.D.W.Va. Dec. 18, 2014), *aff'd*, 635 Fed.Appx. 117 (Mem) (4th Cir. 2016), to support its contention that §56.14100(b) is not a strict

liability standard and lacks the specificity to give fair notice of the alleged prohibited conduct. Resp. Rep. at 5. Its reliance on that case is misplaced. In *Bevins*, the Court held that §§ 56.14100(b), (c), and (d) lacked the specificity to qualify for additional damages under the employer immunity exception of § 23-4-2(d)(2) of West Virginia's workers' compensation provision. *Bevins*, 2014 WL at *4-5. Whether the standard is sufficiently specific to qualify for damages under West Virginia law is irrelevant to whether an operator received fair notice under the strict liability framework of the Mine Act.

Actual notice is not required. Under Commission precedent, the due process requirements for fair notice are satisfied so long as the regulation is sufficiently specific that a reasonably prudent person, familiar with the conditions that the regulation is meant to address and the objective the regulation is meant to achieve would have fair warning of what the regulation requires. *Oil-Dri Production Co.*, 40 FMSHRC at 941; *see also Sunbelt Rentals Inc.*, 38 FMSHRC 1619, 1626 (July 2016); *Alabama By-Products Corp.*, 4 FMSHRC 2128, 2130 (Dec. 1992); *Kerr-McGee Corp.*, 3 FMSHRC 2496, 2497 (Nov. 1981); *Palmer Coking Coal Co.*, 22 FMSHRC 887, 891-92 (July 2000) (ALJ).

I find that § 56.14100 is sufficiently specific that a reasonably prudent person familiar with the conditions the standard intends to address would have recognized that broken headlights and brake lights on vehicles in use are a violation of the standard. Headlights and brake lights are a near universal safety feature on vehicles and serve to prevent the obvious safety hazard created by front and rear-end collisions. Bonneau testified that CCQ's miners agreed with his contention that lights are a safety feature that would reduce the risk of an accident on the mine site. Tr. 91. A reasonably prudent person familiar with the standard would assume that these lights should work to ensure safe vehicle travel around the mine and that inoperable lights are defects that affect such travel. Inoperable head and brake lights thus must be repaired in a timely matter to prevent accidents.

Furthermore, the Secretary's interpretation of the standard is not novel or unreasonable. Inspectors have often cited operators for failing to timely repair non-functional brake lights under § 56.14100(b) and Commission Judges have consistently affirmed the Secretary's interpretation that broken brake lights are a defect affecting safety that must be timely repaired to prevent a hazard. *See e.g., Boart Longyear Co.*, 34 FMSHRC 2715, 2718-19 (Oct. 2012) (ALJ); *Lehigh Southwest Cement Co.*, 33 FMSHRC 340, 355 (Feb. 2011) (ALJ); *Palmer Coking Coal Co.*, 22 FMSHRC 887, 892 (July 2000) (ALJ); *Barrett Paving Materials, Inc.*, 15 FMSHRC 1999, 2007-08 (Sept. 1993) (ALJ). The Commission has also consistently affirmed the Secretary's interpretation that broken headlights are a defect affecting safety and must be timely repaired under the standard. *Apex Quarry, LLC*, 36 FMSHRC 211, 220-21 (Jan. 2014) (ALJ); *Florida Rock Industries, Inc.*, 34 FMSHRC 745, 761-62 (Mar. 2012) (ALJ); *Freeman Rock, Inc.*, 28 FMSHRC 354 (May 2006) (ALJ); *Walker Stone Co.*, 20 FMSHRC 1225, 1226 (Oct. 1998) (ALJ); *Bob Bak Construction*, 19 FMSHRC 582, 604-05 (Mar. 1997) (ALJ).

I find that adequate notice was provided to CCQ as to the requirements of the standard.

C. Gravity

Inspector Bonneau designated both citations as non-S&S and unlikely to result in lost workdays or restricted duty. The Quarry is small and has minimal traffic, only operates during the daytime and in clear weather, and enforces traffic guidelines, speed limits, and stop signs. Tr. 34, 118-19. I find that the violation was unlikely to result in a collision on the Quarry site. In the event of a collision between vehicles, Bonneau believed that either driver could sustain whiplash, broken bones, strains, or sprains. Tr. 70-71. I affirm the Secretary's designation on both citations.

D. Negligence

The Secretary designated both violations to be the result of CCQ's moderate negligence because the operator was aware that the lights on all of the vehicles were defective. Tr. 128-29. However, CCQ has never been cited for the condition in the past despite the conditions existing for quite some time, and the conditions of the mine rendered any actual accident quite unlikely. Tr. 139-40. Less than 20 people worked at the Quarry at any given time and no traffic-related injuries occurred on the site in at least 15 years. Tr. 119. Speed limits at the Quarry topped at 10 miles per hour and the trucks only traveled short distances at very slow paces. Tr. 119. The Quarry does not generally operate at night or in adverse conditions, lessening the impact of missing or broken headlights or brake lights during operations. Tr. 119. While a reasonably prudent miner would have repaired the brake lights, under the circumstances the brake lights did not pose a serious safety concern to this particular mine site. I reduce CCQ's negligence to low for both citations.

E. Penalty

The Secretary proposed a penalty of \$118.00 for each citation. CCQ's history of previous violations is low and it had not been cited for this violation prior to Bonneau's inspection. Tr. 139-40. The violations were unlikely to result in lost workdays or restricted duty, and were the result of CCQ's low negligence given the operating conditions at the Quarry. Respondent acted quickly and in good faith to abate the citations. Jt. Stip. 8. Accordingly, I assess a penalty of \$100.00 for each citation.

IV. ORDER

The Respondent, Cactus Canyon Quarries, Inc., is hereby **ORDERED** to pay the Secretary of Labor the total sum of **\$200.00** within 30 days of this order.⁶



David P. Simonton
Administrative Law Judge

Distribution: (U.S. First Class Mail)

Christopher D. Lopez-Loftis, Office of the Solicitor, U.S. Department of Labor, 525 Griffin Street, Room 501, Dallas, Texas 75202

Andy Carson, 7231 CR 120, Marble Falls, Texas 78654

⁶ 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.