

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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April 19, 2022

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

v.

CACTUS CANYON QUARRIES INC.,  
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. CENT 2021-0090  
A.C. No. 41-00009-527340

Mine: Fairland Plant & Qys

**DECISION AND ORDER**

Appearances: Tina D. Davila, U.S. Department of Labor, Office of the Solicitor, 525  
Griffin Street, Suite 501, Dallas, TX 75202

Andy Carson, Cactus Canyon Quarries Inc., 7232 Co. Road 120, Marble  
Falls, TX 78654

Before: Judge Simonton

**I. INTRODUCTION**

This case is before me upon a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration, against Cactus Canyon Quarries, Inc. (“Cactus Canyon” or “Respondent”), pursuant to the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 801.<sup>1</sup> This case involves three Section 104(a) citations.

The parties presented testimony and documentary evidence at a virtual hearing held on September 21–22, 2021. MSHA Inspector Ty Fisher testified for the Secretary. Cactus Canyon employees Esmael Garcia and Jesus Garcia and president Andy Carson testified for Respondent. After fully considering the testimony and evidence presented at hearing and the parties’ post-

hearing briefs, I **AFFIRM** Citation No. 9641812, as modified herein, and **VACATE** Citation Nos. 9641813 and 9641814.

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<sup>1</sup> In this decision, the joint stipulations, transcript, Petitioner’s exhibits, and Respondent’s exhibits are abbreviated as “Jt. Stip.,” “Tr.,” “Ex. P-#,” and “Ex. R-#,” respectively.

## II. STIPULATIONS OF FACT

At hearing, the parties agreed to the following stipulations:

1. Cactus Canyon Quarries, Fairland Plant & Qys is a mine as defined under section 3(h) of the Mine Act, 30 U.S.C. § 802(h).
2. The mine is subject to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.*
3. 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 issue a decision.
4. At all times relevant to these proceedings, the products of the subject mine enter into commerce or the operations of products thereof which affect commerce within the meaning and scope of the Mine Act.
5. Copies of the citations and 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 on block 22 of the citation at issue in this proceeding is an authorized representative of the United States of America, Secretary of Labor assigned to MSHA, and was acting in his official capacity when issuing the citations at issue in this proceeding.
7. Respondent timely contested the violations.
8. Respondent abated the citations timely and in good faith.

Tr. 10-18.

## III. FINDINGS OF FACT AND SUMMARY OF TESTIMONY

Cactus Canyon operates Fairland Plant and Qys, a small mine located in Marble Falls, Texas, that produces and sells over thirty colors of various size marbles to the terrazzo industry. Tr. II 79. On November 5, 2020, MSHA mine safety and health specialist Ty Fisher,<sup>2</sup> who was a mine safety and health inspector for MSHA at that time, conducted an inspection of the mine.

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<sup>2</sup> At the time of the hearing, Ty Fisher had worked at MSHA for two years and ten months. Tr. I 117. He has worked in the mining industry for well over 30 years. *See* Tr. I 287.

Tr. I 117-18. During the inspection, Fisher issued the three citations contested in this proceeding.

Fisher testified that he issued one citation when he determined that the low brake pressure alarm on the #34 yellow International end dump truck at the mine was not functioning. Tr. I 118; Ex. P-3. He explained that the purpose of the vehicle's low brake pressure alarm is to alert the driver when the reservoir air tank reaches 50 or 60 percent of its normal operating capacity. Tr. I 118-19. When pressure is lost in the tank, less pressure is applied when the driver engages the brakes, and the alarm exists to warn the driver of this reduced braking capability. Tr. I 118-19. Fisher testified that the cited truck was loaded at the time of inspection, and a loaded truck with reduced braking capacity is hazard because an operator may not be able to stop the vehicle. Tr. I 121, 184. To terminate the citation, the mine repaired the alarm that same day. Ex. P-3 at 2.

Cactus Canyon employee Esmael "Izzy" Garcia<sup>3</sup> confirmed that at the time of the inspection the truck was loaded and available to be driven, and that the low brake pressure alarm on the truck did not function when tested. Tr. I 53-54. He said this truck is used two to three times per day. Tr. I 57-58. He accompanied the inspector during the inspection and helped him test all of the trucks. Tr. II 28. He recounted that, on this truck, every component of the brake system was fully functional other than the low brake pressure alarm. Tr. II 31. When asked if the low brake pressure alarm is part of the truck's brake system, he answered that it is not. Tr. II 72. Esmael Garcia expressed his understanding that a low brake pressure alarm does not affect any part of the brake system. Tr. II 37. In other words, whether the alarm is working or not, it has no bearing on whether the vehicle can properly brake or not; a nonfunctioning alarm will not *cause* the truck to lose braking capability. Tr. II 39-40. He further explained that in a situation where the air pressure was low and the alarm did not activate, the driver of the vehicle would nevertheless be on notice that the pressure was low because the truck is equipped with pressure gauges for both the air tanks in the vehicle. Tr. II 38, 72. Both of these gauges were functioning properly. Tr. I 216.

Cactus Canyon employee Jesus Garcia<sup>4</sup> also testified that the low brake pressure alarm was not working during the inspection, and that the truck in question is generally used two to three times per day. Tr. I 91-93. Before the inspection at issue, he did not know the purpose of the low brake pressure alarm and said at hearing that in his 40 years at the mine, "no one has ever said anything about those alarms." Tr. I 92. Jesus Garcia fixed the low brake pressure alarm to terminate the citation. Tr. II 7.

At hearing, mine president Andy Carson did not contest that the low brake pressure alarm on the #34 truck was not functioning. However, he asserted that the alarm was not a part of the truck's brake system, since it "reports on the status of the system" but "does not affect the system itself." Tr. II 94. He testified that the alarm was essentially unnecessary at the mine because the

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<sup>3</sup> Esmael Garcia has worked at Cactus Canyon for 15 years as a general laborer and mechanic. Tr. I 43-47. He holds a commercial driver's license. Tr. II 27.

<sup>4</sup> Jesus Garcia has worked as a laborer at Cactus Canyon for approximately 40 years. Tr. I 81-83.

gauges worked, and the alarm's purpose was to give a driver time to pull off the road or highway, which would not be necessary at the mine because it has no traffic and imposes a speed limit of 10 miles per hour. Tr. II 93, 97.

After issuing the citation for the brake pressure alarm, Fisher issued citations for two other trucks in service at the mine, both of which were cited for inoperable windshield wipers. Tr. I 151-52, 158-59; Exs. P-8, P-10. The first was the yellow #3 International end dump truck, and the second was the white Ford F8000 end dump truck parked next to it. Exs. P-8, P-10; Tr. I 158. Through conversations with the miners on site, Fisher determined that both trucks were available and ready to be used. Tr. I 152, 158-59. When tested, the windshield wipers on both trucks failed to function. Tr. I 151, 158. Fisher testified that he believed the nonfunctioning wipers posed a hazard because, if a storm were to come on suddenly and the trucks were not near a parking area or somewhere else that they could be parked instantaneously, they may need to be operated in the inclement weather. Tr. I 155. He also noted that the wipers are necessary because there could be dusty conditions where dust needs to be wiped off the windshield if the sunlight hits it and causes a reflection the driver cannot see through. Tr. I 156. To terminate these citations, the mine repaired the wipers on both trucks. Exs. P-8 at 2, P-10 at 2.

Esmael Garcia, Jesus Garcia, and Andy Carson all acknowledged that the windshield wipers were not functioning on these two trucks. *See* Tr. I 60-61, 69, 110; Tr. II 102. However, they all testified that windshield wipers are essentially unnecessary on the trucks at the mine because of certain unique facts about this operation and the product it produces. Cactus Canyon produces terrazzo marbles as well as some landscaping stones. Tr. II 79-81. While the landscaping stones can get wet, Carson explained that the terrazzo marbles cannot get wet or dusty. Tr. II 81. This is because the product is eventually mixed with epoxy, so water will ruin the mixture, and any dust will likewise ruin the final product by changing the end color. Tr. II 81. Accordingly, the mine needs to pay particular attention to keeping the product dry and dust free. Tr. II 81-82. Both Esmael Garcia and Jesus Garcia confirmed that the mine does not operate in inclement weather and testified that all employees at the mine are aware of this policy. Tr. I 65; Tr. II 9, 57, 59. Further highlighting the mine's adherence to the policy, Esmael Garcia testified that in his 15 years of working at the mine he has never been driving one of the trucks when it started raining. Tr. I 65.

Due to the unique nature of the product the mine produces, Cactus Canyon must wash its trucks very frequently. Andy Carson testified that the mine produces over 30 colors of terrazzo marbles. Tr. II 79-80. Esmael Garcia testified that the trucks need to be clean so that the various colors do not mix with one another. Tr. I 55. He specified that the trucks are washed out between uses, and that the windshields are washed in addition to the bed and back of the trucks. Tr. I 55-56. Jesus Garcia also testified that the trucks are washed before being loaded with a different color and that when performing this task, employees wash the entire truck, not just the truck bed. Tr. II 14-15.

Fisher testified that if there had been signage in the vehicles prohibiting their use during any hazard that would occur because of obstructed vision, he would not have written the citations for nonfunctioning windshield wipers. Tr. I 286. He did explain that had this been the case, he would have still recommended that the mine fix the wipers because, though sometimes acceptable, “administrative controls are never a good way to go.” Tr. I 286.

#### IV. DISPOSITION

##### A. Citation No. 9641812

During his inspection on November 5, 2020, Fisher issued section 104(a) Citation No. 9641812, which alleged:

The air brake system on the #34 yellow International end dump truck with serial #1HSLCHYN5GHA6607 & model #1754 with a Manufactures date of 06/27/1986 was not maintained in functional condition. When inspected the operator (CDL license holder) demonstrated the correct method of testing the low brake pressure alarm, the low brake pressure alarm system failed to work in two attempts. This safety defect is an intricate part of the air brake system and when it is not maintained in a functional state affects the safe operation of the truck exposing the operator to injuries from a failed brake system.

Ex. P-3 at 1. Fisher designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.14101(a)(3) that was unlikely to cause an injury that could reasonably be expected to result in “lost workdays or restricted duty,” would affect one miner, and was caused by Cactus Canyon’s moderate negligence. Ex. P-3; Tr. I 134-35.

##### i. Fact of 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). To prevail, the Secretary must prove any cited violation “by a preponderance of the evidence.” *Garden Creek Pocahontas Co.*, 11 FMSHRC 2148, 2152 (Nov. 1989). For the reasons that follow, I find that the Secretary has presented sufficient evidence to show that Cactus Canyon violated 30 C.F.R. § 56.1401(a)(3).

The regulation mandates that “[a]ll braking systems installed on the equipment shall be maintained in functional condition.” 30 C.F.R. § 56.1401(a)(3). The parties agree that the #34 yellow International end dump truck in question was equipped with a low pressure warning signal, and that the signal was not functioning at the time of the inspection. Tr. I 53, 91, 118. The Secretary maintains that the low brake pressure alarm on the truck is a part of the equipment’s air brake system. Tr. I 150; Petitioner’s Post-Hearing Brief (“Sec’y Br.”) at 3. The

Secretary asserts that because the alarm is a component of the braking system, and because the alarm was not functioning, the fact of violation should be affirmed. Sec’y Br. at 3.

Cactus Canyon asserts that 30 C.F.R. § 56.14101(a)(3) is inapplicable to the nonfunctioning low brake pressure alarm cited by the inspector. Respondent’s Post-Hearing Brief (“Resp. Br.”) at 17-20. Respondent argues that the low brake pressure alarm is not a part of the vehicle’s “brake system” because the alarm cannot cause the brakes to fail; it is merely a signal that reports on the functioning of the air brake system. *Id.* at 19. Accordingly, Respondent maintains the violation should be vacated. Despite Respondent’s fixation on this point, this inquiry does not center on a determination of whether the alarm’s status as functional or not functional affects the braking *capability* of the vehicle. In fact, it is reasonably apparent from the facts established at hearing that the nonfunctioning alarm, which had not functioned in a long time, had *no* bearing on the actual braking capability of the truck. The low brake pressure alarm is a signal that alerts the vehicle’s operator to a loss of air pressure. Tr. I 118-19, 190-91. The signal was not functioning, but at the time of inspection, the truck’s brakes worked just fine. Tr. I 58, 141; Tr. II 31-32.

The proper inquiry here is simply whether the low brake pressure alarm is a component of the #34 truck’s “braking systems,” and thus must be maintained in functional condition under 30 C.F.R. § 56.14101(a)(3). In *Daanen & Jansen, Inc.*, the Commission considered this same standard in a case involving rear adjusting bolts that had become frozen in place. 20 FMSHRC 189 (Mar. 1998). In that case, the respondent asserted that “the standard’s plain language requires a finding of violation only when the braking system fails to serve its primary purpose of stopping and holding the vehicle.” *Id.* at 191-92. The Secretary countered that “the plain language of the standard mandates a finding of violation when a component of the braking system is not maintained in functional condition, regardless of whether the braking system is capable of holding and stopping the vehicle.” *Id.* at 192. Alternatively, the Secretary argued that her interpretation of the standard, as outlined in MSHA’s Program Policy Manual, was reasonable and entitled to deference. *Id.* The Commission determined that the language of section 56.14101(a)(3) supported at least two plausible and divergent interpretations, and accordingly found that it was ambiguous. *Id.* at 192-93. The Commission then examined the Secretary’s interpretation and found that it was consistent with the language of the regulation, that it advanced the Mine Act’s goal of protecting miner safety, that it had been consistently applied, and that it gave meaning to all subsections of the standard. *Id.* at 193-94.

In making its findings, the Commission in *Daanen & Jansen* looked at the common usage of the word “system,” and determined that, “[b]ecause the definition of the term ‘system’ entails an interrelationship of component parts, it follows that for the system to be considered functional, each of its component parts must be functional.” *Id.* at 193. Additionally, the Commission explained that the Secretary’s interpretation of the standard allows for a violation to be issued before the entire braking system fails, and that this preventative interpretation advances the Mine Act’s goal of protecting miners because it seeks to cure defects before accidents occur. *Id.* The Commission also determined that the Secretary’s interpretation of the standard

embodied in the citation had been consistently applied and was succinctly stated in MSHA's Program Policy Manual.<sup>5</sup> *Id.* at 194.

As in *Daanen & Jansen*, it is undisputed in this case that the component at issue failed to perform its designated function—the low brake pressure alarm did not work. As anyone who drives a car can understand, a brake system on a vehicle serves the common purpose of slowing and stopping the vehicle when its operator determines that doing so is desired or necessary. Even if the low brake pressure alarm does not actually cause the vehicle to slow or stop, it serves this common purpose by alerting the driver of the truck to reduced braking capacity. As Fisher explained at hearing, if the brake pressure is low and the alarm is not working, an operator may not be on notice that the truck has reduced braking capability and the truck might become a runaway. Tr. I 184, 198, 211. Obviously, this functionality is directly related to the purpose of the braking system as a whole. The alarm's inclusion as part of the system is further demonstrated in a handout carried by the inspector to help him explain the components of brake systems to mine operators. Ex. P-7, at 5; Tr. I 149-50.

Respondent highlighted the fact that the low brake pressure alarm is essentially redundant where the truck in question had fully functional, accurate pressure gauges that convey to the operator the air pressure in both air tanks at any given time. Resp. Br. at 20. This safety feature, though it may be redundant, does not obviate the requirement to maintain the alarm under section 56.14101(a)(3). The standard requires that “all” components be functional, and, since the warning signal is a component of the braking system and was not functioning, Cactus Canyon has violated the standard.

I find that the low brake air pressure alarm is, unquestionably, a component of the brake system of the #34 dump truck, that the alarm was not functioning at the time of inspection, and thus conclude that Cactus Canyon violated section 56.14101(a)(3). Accordingly, Citation No. 9641812 is **AFFIRMED**, as modified below.

## ii. Gravity

Fisher designated the citation as unlikely to cause an injury that could reasonably be expected to result in lost workdays or restricted duty. Ex. P-3. He explained at hearing that he marked the citation as “unlikely” because the brakes had no air leaks at the time of inspection, the horn on the truck is electric and would not use any air from the air tank when used, the air tanks are drained of moisture daily, and there is only one slope on the mine site. Tr. I 140-41. He further explained that he marked “lost workdays or restricted duty” because the driver is the only person who was likely to be affected by the hazard, and whiplash would be the most likely injury. Tr. I 143-44.

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<sup>5</sup> MSHA's preventative interpretation analyzed in *Daanen & Jansen* remains the same all these years later: “Standard [56].14101(a)(3) should be cited if a component or portion of any braking system on the equipment is not maintained in functional condition even though the braking system is in compliance with (1) and/or (2) above.” IV MSHA, U.S. Dep't of Labor, *Program Policy Manual*, Parts 56/57, at 51 (2003).

I find the gravity designations made by the inspector to be appropriate. The nonfunctioning low brake pressure alarm was unlikely to cause an injury because the air tanks were holding pressure, the tanks are drained of moisture daily, and there is only one slope at the mine site. The #34 truck is only used two or three times per day on mostly flat ground at low speeds. Tr. I 143-44. Fisher determined only one person—the driver—would be affected by this violation. Tr. I 144. I find that Fisher properly designated this violation as unlikely to cause an injury that could result in lost workdays or restricted duty and as affecting one person.

### **iii. 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). Fisher determined this violation was the result of Cactus Canyon’s moderate negligence because “no one seemed to know that the trucks had a low brake pressure alarm system.” Tr. I 144-45. Pursuant to the Secretary’s regulations, negligence is considered moderate when “the operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.” 30 C.F.R. § 100.3: Table X.

Unlike MSHA, however, the Commission and its judges determine whether an operator has met its duty of care using a traditional negligence analysis, considering the “totality of the circumstances holistically,” including “what actions would have been taken under the same circumstances by a reasonably prudent person familiar with the mining industry, the relevant facts, and the protective purpose of the regulation.” *Brody Mining, LLC*, 37 FMSHRC 1687, 1702 (Aug. 2015). In this case, Carson and his employees were unaware of the existence of the low brake pressure alarm but should have been aware of it. Esmael Garcia had his commercial driver’s license and had been trained to perform the tests that would have detected the nonfunctioning alarm. Tr. II 29-30. A reasonably prudent person familiar with the mining industry likely would have taken the vehicle out of service until each component of the braking system was working properly. However, since Carson and his employees were not aware of the alarm and utilized the functioning gauges to determine whether the air tanks were holding pressure, I reduce Cactus Canyon’s negligence from moderate to low for this citation.

### **B. Citation Nos. 9641813 and 9641814**

Fisher issued nearly identical citations for the yellow #3 International end dump truck and the white Ford F8000 end dump truck, stating for each that the windshield wipers:

did not work when tested. This condition increases the risk of collision with other equipment during dusty or inclement weather conditions exposing miners to injury. The loader was not taken out of service, marked or tagged out of service, parked in a designated area for equipment with defects, or was there any posting warning of this defect. Mine operator stated that the truck was parked in an area for operational and ready to be used equipment with another truck. There was no tag or energy isolation locking device on the truck.



Exs. P-8 at 1, P-10 at 1. Fisher designated the citations as non-significant and substantial violations of 30 C.F.R. § 56.14100(c) that were unlikely to cause injuries that could reasonably be expected to result in “lost workdays or restricted duty,” would affect one miner, and were caused by Cactus Canyon’s moderate negligence. Exs. P-8 at 1, P-10 at 1.

**i. Fact of Violation**

The cited standard mandates that

[w]hen defects make continued operation hazardous to persons, the defective items including self-propelled mobile equipment shall be taken out of service and placed in a designated area posted for that purpose, or a tag or other effective method of marking the defective items shall be used to prohibit further use until the defects are corrected.

30 C.F.R. § 56.14100(c).

Fisher testified that at the time of inspection the windshields of the two cited trucks were not perfectly clean but were “good.” He explained, however, that the defective wipers made continued operation hazardous because dust can come up from equipment traveling throughout the mine site, and obstructed vision could cause an injury. Tr. I 273. He also testified that a storm requiring the use of the wipers could come on suddenly, even though the mine does not generally operate in inclement weather. Tr. I 155-56. Accordingly, the Secretary asserts that these citations should be upheld because the operation is inherently dusty, and the water used to control dust as well as the water used to wash out the trucks could cause dust to stick to the windshields and impair visibility. Sec’y Br. at 9-10. The Secretary contends that because the windshields *could* get dusty, continued operation of these two trucks was hazardous.

Cactus Canyon argues that these citations should be vacated because there was “no likelihood” of an obscured windshield that could be corrected by functioning windshield wipers. Resp. Br. at 16-17. At hearing, Carson expressed his opinion that “the hazard determination that there was some sort of danger. . . to health or safety does not have support.” Tr. II 101.

Given the relevant facts, I agree. The standard mandates that defective equipment be taken out of service “[w]hen defects make continued operation hazardous to persons.” 30 C.F.R. § 56.14100(c). It is undisputed that the windshield wipers were not functioning on either of these two trucks. *See* Tr. I 60-61, 69, 109-110. The broken wipers made the equipment defective. However, these defects did not make continued operation hazardous to persons at the mine. It is well established that Cactus Canyon does not operate in windy or rainy conditions and washes its trucks very frequently. Additionally, these vehicles are never operated outside of the mine, and are only used on site over a short distance at a maximum speed of 10 miles per hour. Tr. II 48, 93. Given these very unique facts, I find that the Secretary has failed to establish that the broken windshield wipers made continued operation of these two trucks hazardous.

I find it is worth noting here that Fisher acknowledged that Cactus Canyon employees told him they shut down operations in the rain and that he considered the fact that employees shut down the plant “when they’re supposed to.” Tr. I 236, 238. He later testified that had there been a notice in the vehicles informing employees not to operate in the rain, *he would not have written the citations for the nonfunctioning wipers*. Tr. I 283-84. While it may not have been established to the inspector’s liking at the time of inspection, I find that there was a well-understood policy at the mine to discontinue operations in windy and rainy conditions or when there was a sufficient chance of such conditions. Though unwritten, the very policy that would have prevented Fisher from issuing these citations was in place and adhered to by all employees. In almost any other situation involving motor vehicles, it would be hazardous to operate without functioning wipers. In this unique circumstance, however, I find the Secretary has failed to meet its burden of proving a violation of section 56.14100(c) by a preponderance of the credible evidence. Accordingly, Citation Nos. 9641813 and 9641814 are **VACATED**.

## V. 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 Co.*, 5 FMSHRC 287, 291 (Mar. 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).

For Citation No. 9641812, the Secretary proposed a regularly assessed penalty of \$123.00. Ex. P-2. Cactus Canyon has a minimal violation history and is a relatively small operation. *Id.* Respondent presented no evidence regarding whether payment of the proposed penalty would affect its ability to continue in business. As discussed above, I find that this non-significant and substantial violation was unlikely to result in an injury causing lost workdays or restricted duty and was the result of Cactus Canyon’s low negligence. Finally, Cactus Canyon demonstrated good faith in achieving rapid compliance after the citation was issued. Jt. Stip. 8. Considering these factors, I find that the proposed penalty of \$123.00 is appropriate for this violation.

## VI. ORDER

It is hereby **ORDERED** that Citation No. 9641812 is **AFFIRMED**, as modified to reduce the degree of negligence to “low,” and that Citation Nos. 9641813 and 9641814 are **VACATED**. Respondent is hereby **ORDERED** to pay the Secretary **\$123.00** within 40 days of this order.<sup>6</sup>



David P. Simonton  
Administrative Law Judge

Distribution: (Electronic and U.S. First Class mail)

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<sup>6</sup> Please pay penalties electronically at Pay.Gov, a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508>. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers.