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SOL (MSHA) V. IDEAL BASIC  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceedings Docket No. SE 79-16-M A.O. No. 31-00582-05003
v.	Docket No. BARB 79-266-PM A.O. No. 31-00582-05002
IDEAL BASIC INDUSTRIES-CEMENT DIVISION, RESPONDENT	Castle Hayne Quarry & Mill

DECISIONS

Appearances: Darryl A. Stewart, Attorney, U.S. Department of Labor, Nashville, Tennessee, for the petitioner  
Karl W. McGhee, Esq., Wilmington, North Carolina, for the respondent

Before: Judge Koutras

Statement of the Proceedings

These consolidated civil penalty proceedings concern proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), on January 31 and April 12, 1979, charging the respondent with a total of 10 alleged violations of certain mandatory safety standards set forth in Part 56, Title 30, Code of Federal Regulations. Respondent filed timely answers contesting the citations and requested hearings. Hearings were held pursuant to notice on March 5, 1980, in Wilmington, North Carolina, and the parties appeared and participated therein. The parties waived the filing of written briefs or proposed findings and conclusions and were afforded an opportunity to present arguments on the record during the course of the hearings.

Issues

The principal issues presented in these proceedings are (1) whether respondent has violated the provisions of the Act and implementing regulation as alleged in the proposal for assessment of civil penalty filed, and, if so, (2) the appropriate civil penalties that should be assessed against the respondent for the alleged violation based upon the criteria set forth in section 110(i) of the Act. Additional issues raised by the parties are identified and disposed of in the course of these decisions.

In determining the amount of a civil penalty assessment, section 110(i) of the Act requires consideration of the following criteria: (1) the operator's history of previous violations, (2) the appropriateness of such penalty to the size of the business of the operator, (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 operator in attempting to achieve rapid compliance after notification of the violation.

#### Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub. L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

#### Discussion

#### Stipulations

The parties stipulated as to jurisdiction, that the respondent's quarry and mill is subject to the Act, that the site was inspected by MSHA inspectors during the period July 25-27, 1978, that respondent was given an opportunity to accompany the inspectors during their inspection, and that the citations in issue in these proceedings were duly served upon respondent's representatives (Stipulation filed August 29, 1979).

In addition to the prehearing stipulations, the parties also agreed as to the size and scope of respondent's mining operation at its Castle Hayne Quarry and Mill, indicated that the product mined at the open pit quarry is marl, which is the basic substance for producing cement, and agreed that respondent has an average history of prior violations (Tr. 9, 10).

DOCKET NO. SE 79-16-M

The five section 104(a) citations issued in this docket were all issued by MSHA Inspector Edwin E. Juso, and they are as follows:

Citation No. 103821, July 25, 1978, 30 C.F.R. 56.9-87: "The reverse signal alarm for the 988 cat loader working near the primary crusher was not functioning."

Citation No. 103824, July 25, 1978, 56.14-1: "The idlers under the skirtguards and the take-up pulleys for the No. 2 clinker belts were not guarded. The pinch points were exposed. The No. 2 clinker belt is on the 5th floor of the mill building."

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Citation No. 103827, July 25, 1978, 56.14-1: "The idlers under the skirtboards and the tail pulley for the No. 1 clinker belts were not guarded. The No. 1 clinker belt is on the 5th floor of the mill building.

Citation No. 103830, July 25, 1978, 30 C.F.R. 56.14-1: "The idlers under the skirtboards for the coal stacker belt were not guarded.

Citation No. 103843 July 25, 1978, 30 C.F.R. 56.9-2: "The hydraulic side coupling for the track mobile No. 1 was broken. Railroad cars could not be stopped due to this in case of an emergency.

#### Testimony and Evidence Adduced

Citation No. 103821 - Petitioner

Inspector Edwin Juso confirmed that he issued the citation in question after observing the loader in question back up and no alarm was sounded. The machine is a very large one, and access to the operator's seat is by means of a ladder. The machine has an obstructed view to the rear at eyesight level and a man standing behind it at some distance would not be visible to the operator. The inspector indicated that he has been in the cab of such a machine and has been seated next to the operator. The machine in question had side view exterior mirrors, and while an alarm was in fact installed on the machine, it was inoperable. He observed the machine in operation, and indicated that it was loading marl from a pit pile and taking it to the primary crusher. Although the area where the machine in question was an area traveled by pedestrians, he observed no one on foot near the machine on the day the citation issued. Although a spotter is acceptable in lieu of an alarm, he saw no one stationed as a spotter, and he recalled no other vehicle in the vicinity. The machine in question is an "articulating" machine; that is, the wheels do not turn, but the cab turns to a maximum of some 70 degrees. When the cab turns right or left there is an obstructed view to the other side (Tr. 11-18). Inspector Juso indicated that abatement was achieved by repairing the alarm, and the respondent acted in good faith quickly and there was no willful neglect (Tr. 19).

On cross-examination, Inspector Juso stated that it was possible that the machine operator had disconnected the wire from the backup alarm to keep it from sounding because he was alone and did not want to hear the sound. However, he could not recall the operator telling him that because it was so long ago. He confirmed that he observed no one in the area except the loader operator, but indicated that people do travel through the area while walking from the mill building to the crusher. He could not recall whether the loader had a horn and he indicated that he cited the respondent for not having an automatic reverse alarm. The purpose of such a requirement is to prevent the machine from backing over a pedestrian or a smaller piece of equipment. Although the crusher operator is normally stationed inside the

building, there are times when he must leave and go to the area where the loader is operating. Although the loader operates in different areas, he did observe it move to other locations on the day in question. Although he

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personally has never operated such a loader he does know that it operates forward and reverse while loading. While conceding that the sound emitted by the reverse alarm is "annoying", he believed that it is not if one is wearing ear protection. Even though an operator may be alone while operating the machine, the standard still requires an alarm because the machine may be moved to another operating location. There are always blind spots and obstructed views to the rear of such loaders, but this would depend on the particular circumstances presented (Tr. 20-31).

#### Respondent's Testimony

Robert Pyles, plant administrator, testified that he accompanied the inspector when the citation was issued and he stated he was familiar with the loader in question. It was equipped with a backup alarm as well as a horn, but the alarm had been disconnected. The wire to the micro-switch located on the steering column had been disconnected and this was contrary to the company safety rules. Mine management was not aware of this fact until the morning of the inspection. The machine was subsequently completely overhauled, and in the process the alarm was connected directly to the transmission so that it sounded automatically when the machine was placed in reverse. He identified exhibit R-1 as a photograph of the primary crusher and estimated that it was some 100 yards from the main plant where people walk and come by. No one had any reason to be in the area where the machine was operating on the day in question (Tr. 36-39).

On cross-examination, Mr. Pyles testified that the loader was taking material from the stock pile and dumping it in the crusher. Material is not ordinarily stockpiled, but is only stock piled for emergency. The normal operation entails transporting the material directly from the pit quarry by trucks and then dumping the loads directly into the crusher. He was not aware that trucks would be operating in the vicinity of the loader, and he was not aware that someone was in the crusher building. Company policy dictates that backup alarms be connected regardless of where the machine may operate, and if the operator of the machine disconnected it he had no authority to do so (Tr. 40-42). The function of the loader operator is to dump the marl materials into the crusher (Tr. 43).

Citation No. 103824, 103827, and 103830.

#### Petitioner's Testimony and Evidence

Inspector Juso confirmed that he issued the three citations in question and that he cited section 56.14-1 of the standards after finding unguarded moving machine parts. He issued Citation No. 103824 after observing that the belt idlers under the skirtboards on the No. 1 and No. 2 clinker conveyors were not guarded. The idlers, with the skirtboards located directly above them, formed a pinch point and if a man caught his finger or hand inside the pinch point, a serious injury could result. However, the extent of the injury would depend on the amount of pinch

point clearance. While all idlers are not required to be guarded, those that are hazardous and have skirtboards

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directly on top of them are required to be guarded. There was access to both conveyors on both sides, and the conveyors were some 42 inches off the floor, and this height was consistent along the entire length of the conveyors, which were some 50 to 100 feet long. He saw evidence that cleanup work had been performed adjacent to the unguarded idlers and observed footprints and a shovel adjacent to the idlers. Travelways where persons could pass by were adjacent to both sides of the belts. He observed no structural guards on the skirtboards or belts to prevent persons from falling into the unprotected idlers, and he observed a man near the skirtboards but he was not shovelling. The idlers were at a belt transfer point, normal spillage occurs there, and he observed evidence that cleaning had taken place under the belts, and he concluded that cleanup personnel would be exposed to a hazard since cleanup is required where there is spillage present (Tr. 45-52).

Inspector Juso testified that he also observed an unguarded belt takeup pulley which is used to take up the belt slack and keep it taut. This was at a different belt location, and while the unguarded idlers and takeup pulleys constituted separate violations, he incorporated them into one citation since it was on the same piece of equipment. The pulley was large but he did not measure it. He believed the pulley was guarded, but he determined that the guard was inadequate because the pinch point was exposed. He was not concerned about the belt rollers, but only with the pinch point. The pulley was located under the conveyor belt structure itself and slightly above the floor at a point where the takeup and bend pulleys are located. The pulley was of solid cylindrical construction and it is known in the trade as a "wing pulley" (Tr. 52-56).

Inspector Juso testified that the facts surrounding the issuance of Citation No. 103827 was essentially the same as the first guarding violation. The two belts in question are parallel belts with a travelway between them. The idlers on the number one belts where there were skirtboards installed were not guarded. Also, the tail pulley on the No. 1 belt was unguarded and was at the same end as the takeup pulley on the No. 2 belt. Both belts were of the same height and he saw evidence of cleanup on the No. 1 belt also. He observed footprints and determined that shovelling had taken place. The tail pulley is also known as a "wing or spoked pulley", a portion of it was exposed, and someone could inadvertently put his hand in or slip or fall into the pinch point. The hazard of being caught in the idlers is the same as that which was presented on the No. 2 belt. While the unguarded locations cited constituted two separate violations, he treated it as one citation (Tr. 56-59).

With regard to Citation No. 103827, Inspector Juso testified that the conditions were essentially the same as the other guarding citations, but that this one concerned only one condition, namely, the unguarded stacker belt idlers located under the belt skirtboards. The idlers under the skirtboards constituted pinch points which were required to be guarded under section 56.14-1. The area was at ground level toward the tail



pulley side of the belt, and he believed the belt was inclined. The unguarded area was at a belt transfer point and the purpose of the skirtboards is to keep the

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material on a straight flow up the conveyor. The hazard was between the idlers, and if someone got his hand into it it would have a mashing or pinching effect. All of the guarding citations were abated in good faith by the respondent (Tr. 59-61).

On cross-examination, Mr. Juso indicated that it is not necessarily true that some passing employee would have to slip or fall to come into contact with the pinch points at the locations cited in the three guarding citations. He was concerned with cleanup personnel in close proximity to the unguarded idlers under the skirtboards. While cleanup crews may use shovels or brooms and be that far from the pinch points, they may take breaks and start talking with their fellow workers, and the intent of the standard is to guard against accidents. Maintenance men and others walk through the areas cited, and he believed the unguarded areas cited were hazardous because of the pinch points, the grabbing effect, the spoked pulley, and "common sense tells me what is a hazard and what is not" (Tr. 73-78). Personnel may slip and fall into the pinch point, and a shovel may get caught in the pinch points and a hand may follow the shovel in.

Inspector Juso stated that he does not consider a belt idler roller per se to be a pinch point because there is no weight on top of the conveyor and if someone put there hand in, the belt would lift up and the hand would pass through. Although such a belt is considered moving machinery, it is not required to be guarded. However, if a skirtboard were installed, a pinch point would be created because the hand would be stopped by the skirtboard and be mashed (Tr. 80-83). Inspector Juso could not specifically recall the types of guards installed to achieve abatement of the guarding citations (Tr. 84).

In response to bench questions, Inspector Juso stated that the clinker belt tail pulley was guarded to some extent, but that the idlers beneath the skirtboards were not guarded at all. Regarding the pinch points in question, he indicated that they were approximately 1 foot inside the belt framework and that would be the approximate distance one would have to reach to contact the pinch points (88-91).

#### Respondent's Testimony

Al Klayshak, safety director, testified that the guarding standards published as "American National Standards" (ANSI) have been accepted by OSHA as sufficient to cover belt guarding requirements. He discussed several specific standards and indicated they were more specific and more to the point than the mandatory standards promulgated under the Act. He also believed that prior to the issuance of the citations in question, the belts in question were safe and he stated that the intent of the safety standards under the Act is not to prevent the inadvertent situation where an employee might fall, but rather, the normal and usual occurrences where an employee could accidentally come in contact with a pinch point in the normal course of his work. He conceded, however, that the ANSI standards may not be cited by

MSHA under the Act, nor relied on by the respondent as compliance under the Act (Tr. 91-99).

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Albert L. Simon, plant manager, testified that he was so employed at the time the citations in question were issued and he described the belt conveyor systems in question. The belts in question are 4-1/2 feet off the ground, and except for cleanup personnel, employees do not normally work at or near the belt lines or pinch points. The clinker belts on the fifth floor location cited are cleaned by shovelling the spillage into wheelbarrows and dumping it in a floor opening away from the belt line. This is done to keep employees away from the belt (Tr. 100-102).

In response to further questions, Mr. Simon stated that abatement was achieved by welding hooks along the skirtboards and hanging one-four-inch rubber belting, approximately 18 inches along, over the hooks. He did not believe anyone could get their arm or any part of his body caught in the locations cited, and he was aware that prior inspections determined that the existing guards were safe (Tr. 102-104).

Citation No. 103843 - Petitioner's Testimony

Inspector Juso confirmed that he issued the citation in question after determining that a side coupling for the number one track mobile vehicle used to push railroad cars was broken. The piece of equipment in question has a front hydraulic coupling as well as a rear manual coupling, and the hydraulic one was broken. The coupling is used to facilitate better traction when it pushes against the railroad cars. The "knuckle" which couples to the car was not functional, and in that condition it would not couple with or hold the car to which it is attached, and this would result in the car being pushed becoming disconnected and the car would "free wheel" through the shop yard and rail loading area. Although the truck mobile has an audible warning horn, it was inoperative. Men and trucks would be in the area and would be exposed to a hazard. The broken coupling was replaced with a new one, and while he did not observe the mobile in operation, he was able to determine that it was being used with the broken coupling prior to the time he issued the citation (Tr. 161-165).

On cross-examination Mr. Juso confirmed that the track mobile in question had couplings on both ends, but that he could not determine whether the end coupling which was broken was in fact being used. Employees in the area told him that the end which was broken had been used, but he could not identify the employees by name. They simply told him that it was used at some unspecified time in the past. He did not see the equipment in operation and simply observed that one of the couplings was broken. He was shown a copy of an order form re-ordering a new coupling for the equipment in question, and he identified a photograph (Exhibit R-7) as a coupling similar to the one which he observed. He conceded that the equipment could have been used from either the front or the rear. He determined that the condition was hazardous from what he was told by the unidentified employees, and he did not record their names in his notes (Tr. 165-170).

In response to bench questions, Inspector Juso affirmed that he did not see the mobile equipment in operation and that it was parked at the time he

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issued the citation. He conceded that he would not have issued a citation if no one had informed him that it had been used (Tr. 173). While there was another identical piece of mobile equipment undergoing repairs, he did not know whether the one with the defective coupling would have been put in operation before the other one was repaired and put back in operation (Tr. 164, 174).

Plant administrator Robert Pyles was called as petitioner's witness, and he confirmed that the track mobile in question had couplings on both ends, one hydraulic, and one manual. He also indicated that both ends of the equipment look identical. He stated that he did not know whether the equipment cited was being used with a broken coupling, and he could not confirm that anyone told the inspector that the track mobile was used with a broken coupling (Tr. 174-176).

Plant manager Albert Simon was called as petitioner's witness, and he testified that he was not with Inspector Juso when he inspected the track mobile. He observed the track mobile the day before the inspection and again on the afternoon of the inspection and on both occasions it was parked at the pack house. The other track mobile was in the shop for repairs. The pack house is a shipping point where the railroad cars are loaded, and he is sure that the cars were loaded the day before the inspection as well as after. He was also sure that the track mobile which was cited would have been used safely prior to the inspection (Tr. 176-178).

On cross-examination, Mr. Pyles testified that the rail cars are actually stopped by their own braking systems. The broken hydraulic coupling on the mobile track was in fact a broken pin and since the track mobile can be operated from either end, instructions were given to use the end with the stationary coupling until the replacement part for the broken one was received (Tr. 179-181).

#### Findings and Conclusions - Docket SE 79-16-M

#### Fact of Violation - Citation No. 103821

With regard to the backup alarm Citation No. 103821, petitioner takes the position that while an alarm was in fact installed on the loader in question, since it was disconnected and not functioning, it is the same as not having one installed (Tr. 24).

Respondent conceded that the backup alarm was disconnected and was not working at the time the citation issued (Tr. 34). Respondent's defense is based on its assertion that the operator of the loader disconnected the alarm because the sound emitted was annoying to him, and that since he was the only person present in the area there was no need for the alarm to sound. Further, in the event the loader were moved to another area, all that would be required is for the alarm to be reconnected (Tr. 24-26).

Section 56.9-87 requires that heavy duty mobile equipment be provided with audible warning devices and that when the operator has an obstructed

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view to the rear, the equipment is required to have an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

In this case, the inspector observed the loader in operation, determined that it had an obstructed view to the rear, and that no observer was present. Although a backup alarm was installed on the loader, it was disconnected and emitted no sound when the loader was operated in reverse. Respondent conceded that the alarm had been disconnected and was inoperative at the time the inspector observed the condition and issued the citation. I conclude and find that petitioner has established a violation. The standard cited requires an audible backup alarm, and I agree with the petitioner's position that an installed inoperative alarm is insufficient to establish compliance. The citation is AFFIRMED.

#### Negligence

I conclude and find that the condition cited resulted from ordinary negligence in that respondent failed to take reasonable care to insure that the backup alarm was in an operative condition before the loader was used. Closer supervision or attention to the loading procedure and operation could have prevented the condition cited.

#### Gravity

Although the inspector observed no one other than the loader operator in the vicinity of the loading operations on the day the citation issued, he did indicate that persons on foot traveled through the area from time to time. Respondent's testimony is that the stockpile where loading was taking place was some 100 yards from the main plant where people travel. It would appear that on the day in question, no other pedestrians or equipment were in the area and petitioner has not established that anyone was exposed to any hazard of being struck or run over by the loader. Under the circumstances, I conclude that the condition cited constitutes a nonserious violation.

#### Fact of Violation - Citation Nos. 103824, 103827, 103830

With regard to the three guarding citations, respondent contended that prior MSHA inspections resulted in the extension of certain emergency stop cords to the skirtboard locations in question and that MSHA accepted this as adequate protection, approved this procedure for all of the plant conveyor belts, and that respondent was completely unaware that additional guarding was necessary. In short, respondent argues that it does not know what has to be done to meet the guarding requirements placed on it by MSHA inspectors from inspection-to-inspection (Tr. 63-73). Further, respondent argues that an inspector's judgment as to a hazardous pinch point, standing alone, is insufficient to establish a violation of the cited guarding standard because the standard itself is so broad (Tr. 85-87).



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30 C.F.R. 56.14-1 provides as follows: Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

It seems obvious to me that the inspector issued the three citations concerning the unguarded belt idlers after determining that the idlers, located approximately 12 inches inside the belt frame, in combination with the skirtboards, constituted unguarded hazardous pinch points which could be contacted by cleanup and other personnel either working at or near those locations or walking by on the adjacent walkways. Since the unguarded pinch points were at belt transfer points, and since he observed evidence of cleanup at those locations, the inspector assumed that cleanup personnel were in close proximity to the unguarded pinch points. The inspector denied any knowledge of any instructional memorandums with respect to the application of the cited standard, and testified that his determination that the unguarded locations were hazardous and could be accidentally contacted by personnel was based on his experience and the facts as he found them on the day the citations issued.

Respondent's defense is based on the assertion that previous MSHA inspections had found that the belt systems in use were adequately guarded and that respondent was in compliance. However, the respondent produced no direct evidence that MSHA had previously inspected the specific locations cited by Inspector Juso and found them to be in compliance. Accordingly, this defense is rejected. Further, respondent's additional defense that OSHA has accepted certain ANSI guarding standards as sufficient compliance is likewise rejected. We are dealing with specific mandatory safety standards promulgated pursuant to a law enforced by MSHA and those requirements are imposed on a mine operator subject to the 1977 Mine Safety Act, and any OSHA-ANSI requirements are irrelevant and immaterial. Further, respondent's defense that the cited standard is intended to protect a mine employee from direct work-related hazards rather than inadvertent or accidental entanglement in a pinch point is likewise rejected. In my view, the two situations are directly related and inseparable. In other words, I believe standard is intended to preclude injuries resulting from someone slipping, falling, or otherwise coming into contact with an exposed unguarded pinch point, and most injuries in this regard are the direct result of inadvertent or accidental contact with such unprotected locations.

After careful consideration of all of the testimony and evidence adduced with respect to these citations, I find that petitioner has established that the three unguarded idler pinch point locations, some 12 inches from the edge of the belt frames in question, where cleanup personnel were present and obviously working, constituted areas which could be contacted by persons, thereby inflicting injuries, and that the failure to provide guards at those locations constitutes violations of the cited standards. The citations are AFFIRMED.

With regard to the alleged unguarded takeup pulleys mentioned in Citation Nos. 103824 and 103827, which the inspector treated as single violations

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along with the unguarded idlers, I take note of the fact that the inspector stated that he "believed" those pulleys were guarded, but that the guards were inadequate. However, he offered little credible evidence to establish that those locations were in fact hazardous, and I take note of the fact that section 56.14-3 requires that existing guards extend a sufficient distance to prevent a person from accidentally reaching behind the guard and becoming caught between the belt and the pulley. I believe that the inspector should have cited this standard if he in fact believed that the existing takeup pulleys were inadequately guarded. He obviously treated all of the conditions described in the two citations as single violation, but I conclude that petitioner has not established a violation insofar as the take-up and tail pulleys are concerned, and for purposes of my decision in this matter, I have disregarded those alleged conditions and have levied penalty assessments on the basis of the unguarded idlers which I have found sufficiently support the citations insofar as those conditions are concerned.

#### Negligence

I find that the respondent should have been aware of the fact that the unguarded belt locations cited should have been guarded. Respondent conceded that men were required to be in the area of the belt transfer points to perform cleanup chores, and I believe it is reasonable to expect a mine operator to be aware of potentially hazardous conditions such as unguarded pinch points, and to insure that they are protected. I conclude that the conditions cited resulted from respondent's failure to exercise reasonable care and that this constitutes ordinary negligence.

#### Gravity

I have considered the fact that in at least two of the areas cited, namely, the clinker belts on the fifth floor of the mill building, respondent utilized a cleanup method that entailed shovelling and transporting any spillage by wheelbarrow to a dumping point away from the belts, and that this was done to keep cleanup crews away from the belts. This is itself is a tacit admission by the respondent that the unguarded belt areas posed a hazard, and the fact that walkways were adjacent to the unguarded belt locations added to the gravity of the situation. Further, the evidence establishes that the belts were some 4 to 4-1/2 feet off the ground and that the exposed pinch points were some 12 inches from the belt frames. Considering all of these circumstances, I find that the conditions cited in all three citations were serious.

#### Fact of Violation - Citation No. 103843

Petitioner's counsel argued that it offered testimony that the track mobile had a defective coupling and that Mr. Simon testified that it had been used. However, counsel conceded that the inoperable coupling was probably not used but that the defective one still affected safety since it could have been used. Regardless of whether the defective end is used or

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not, he still maintained that a violation of the cited standard is established if in fact one of the couplings was broken. He conceded that there is no evidence that the defective coupling had been used. (Tr. 185-187).

Citation No. 103843 was vacated from the bench (Tr. 188). The basis for the vacation was my finding and conclusion that petitioner had failed to establish by a preponderance of the evidence that the defective coupling in question was in fact used prior to the time it was replaced by a new one. Section 56.9-2 provides that "equipment defects affecting safety shall be corrected before the equipment is used." I find that petitioner has failed to establish that the nonuse of a defective coupling on the opposite end of the track mobile affected safety. There is absolutely no credible evidence that the broken coupling was in use, and if it was, it was incumbent on the inspector to document the name of the employee who many have advised him that it was, and petitioner should have produce some credible testimony to prove its case. The evidence established that there were two couplings on the track mobile and that the equipment could do the job from either end. Further, petitioner conceded that the defective coupling was probably not used, and I conclude that petitioner has not established that merely using the track mobile with a defective coupling which is not being used rendered the equipment unsafe. My bench decision vacating the citation is reaffirmed and the citation is vacated.

Findings and Conclusions - Docket BARB 79-266-PM

The five citations issued in this docket are as follows:

104(a) Citation No. 103839, July 26, 1978, 30 C.F.R. 56.11-1:

The safe access provided from the third floor to the mill room overhead crane was not being utilized by the crane operator. He had it stopped at the opposite end of the landing and was climbing over or thru the guardrails to gain access to the crane. The employee shall be instructed in the use of the proper access.

107(a) - 104(a) Citation 103840, July 26, 1978, 30 C.F.R. 56.11-1: "An employee was working above the moving raw feed belt conveyor in an unsafe position. The employee was standing straddling the conveyor approximately four to five feet above the ground floor. No protection was provided to keep the employee from falling."

Citation No. 103844, July 27, 1978, 30 C.F.R. 56.16-5: "Compressed gas cylinders belonging to the contractor building the new warehouse were not secured in a safe manner."

Citation No. 104890, July 27, 1978, 30 C.F.R. 56.15-7: "An employee was observed using a cutting torch without an eye shield or goggles. The employee was wearing regular safety glasses without side shields."

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Citation No. 104892, July 27, 1978, 30 C.F.R. 56.9-61: "The clinker stockpile was not trimmed properly creating an overhang. A loader had been working in the area of the overhang which was approximately 20 feet high."

Citation No. 103839 - Petitioner's Testimony and Evidence

Inspector Juso confirmed that he issued the citation in question after determining that a safe means of access was not being utilized by the crane operator. The operator had stopped the crane at the opposite end of the third floor mill room landing and was climbing over or through the guard rails to gain access to the crane. Abatement was achieved by providing a safety belt and line for use by the crane operator in places other than those provided for suitable access. Gates are provided at places along the landing so that an operator may step directly onto the landing floor. Here, the crane was stopped at a place where there was no gate opening and the inspector assumed that the operator got off the crane by climbing over or through the handrails. No one was on the crane at the time he observed it and the crane is approximately 60 feet above the floor. The areas provided with gates are for egress and ingress from the crane, and there is no space between the crane and gate landing where one could slip through and fall to the floor below. The crane he observed was some 40 to 50 feet from the gate (Tr. 106-108).

Inspector Juso stated that the space between the crane and handrails where a person could slip to the floor was approximately 3 to 4 feet, but he could not remember exactly because he took no notes. He stated: "all I know is that it was unsafe, and that is why I wrote the citation" (Tr. 109). He saw no one on the crane, saw no one alight from it over or through the handrail, and the matter was brought to his attention by a mill employee whose name he could not recall (Tr. 109). He believed he asked someone how a person would get on and off the crane parked at the location where he found it, and the unidentified person did not know (Tr. 110). Inspector Juso described the operation of the crane and indicated that it traveled along the mill floor on rails and he assumed the crane operator was climbing over the handrails to alight from the crane, and since he considered this to be an unsafe practice, he issued the citation. He did not speak to the crane operator because he could not locate him (Tr. 111-112).

On cross-examination, Mr. Juso identified photographs of the top of the crane, the crane walkway, and the gate at the top landing (Exhibits R-4 and R-5). He could not recall the exact amount of space between the crane and the landing, but indicated there was a hazard of falling and this would depend on where the operator made his access to the landing (Tr. 114). As for the abatement, Mr. Juso stated that he "went along" with the use of a safety belt and line, but that he did believe that the use of an "A-frame" with handrails from the crane to the landing would be a good method for protecting the operator. The A-frame could be kept on the crane and be used as needed by the operator (Tr.

115). Once access is provided by means of gates, he believed that they should be used; however, a safety belt and line could be used to protect the operator in the event he attempted to climb over the

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handrails from the crane rather than using the gate. The handrails along the landing are to protect pedestrians on the landing walkway from falling below and are not intended to protect a crane operator while climbing over them. An operator climbing through or over the handrails from the crane to the landing, or vice-versa, is not a safe practice (Tr. 115-119, 121-123).

In response to bench questions, Mr. Juso stated that had the crane been parked at a location where there was an exist gate at the time he observed it he would have assumed that the crane operator used the gate and he would not have issued the citation (Tr. 126-127). However, in response to a question as to whether he would automatically issue a citation every time he observes a crane parked at a place other than by an exit gate, he stated "well, I do not want to stop their production because there are certain cases where they have to do this because of other types of work that they use the crane for" (Tr. 128). At the time the citation was issued the crane had a heavy piece of equipment or motor attached to its cable and that is why the crane was parked where he found it (Tr. 129). Even if the crane were parked flush against the landing and the operator simply crawls under the landing handrail and onto the crane, that still would not be 100 percent safe because "something can go wrong" (Tr.128). Mr. Juso did not know where the operator got off the crane on the day he observed the crane (Tr. 129). He knows of no other way a man can get out of the crane other than sliding down the cable (Tr. 130-132).

#### Respondent's Testimony

Plant manager Robert Pyles testified that he was with inspector Juso when the inspector observed the parked crane. He confirmed that the usual and normal means of ingress and egress or access to the crane would be through the gate-type opening provided for that purpose on the third floor. The crane is frequently used at locations other than at the end of the rail and it may remain there for hours at a time. He identified a photograph of the crane (Exhibit R-6) and the cab where the operator is positioned. The operator exists the cab by means of a ladder to the third level, and once at the top of the ladder he will grab the landing handrail and go under it. It would be difficult for him to fall into the space between the crane and the space between the crane and the landing. The operator has hand holds at all points and he described his exit as similar to a boxer entering a ring, and he believed there is no danger involved in exiting the crane in this manner and no one has ever been injured (Tr. 146-149).

On cross-examination, Mr. Pyles confirmed that the gate at the third floor landing is the location where the crane is normally parked so that the operator may enter or exit the crane. The gate swings open for a four-foot wide distance and when opened one can walk through unobstructed by the handrail. He reiterated that it was normal for the crane operator to crawl through the guardrail (Tr. 150).

Al Klashak testified that the crane in question is similar to others used in the industry. He believed that access to and from the crane is safe



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regardless of whether a safety line, A-frame, or other device is used because of the fact that there is insufficient distance between the crane frame for someone to fall to the rail below. He has observed the third floor landing level and there are hand holds for the operator as he reaches top of the ladder. There is no danger in the operator simply walking through the landing guardrail (Tr.152-154).

On cross-examination, Mr. Klashak stated that the third floor guardrails were designed to fit the landing structure and not the crane. There are approximately four gates spaced some 50 or 60 feet apart and their purpose is to permit access to the crane when it is marked, as long as the operator hung on to himself there was no danger of his falling to the floor below (Tr. 152-156).

Albert Simon testified that there is only one gate on the third floor landing and it is positioned at one end. The crane is usually parked at that location if it is stopped for a long period of time. The crane is used at four grinding mills and when it has a suspended load it may stay in place for as much as 2 days. It would be impractical to have additional gates (Tr. 157-159). He does not know why the gate was installed at the end location, but presumes it was installed there so that the crane can be parked clear from the rest of the machinery beneath it (Tr. 160).

Citation No. 103840 - Petitioner's Testimony and Evidence

Inspector Juso confirmed that he issued the imminent danger citation in question after observing an employee working above the moving feed belt conveyor in an unsafe position. The man was standing and straddling the belt with each foot on the belt frame and Mr. Juso and Mr. Pyles immediately went to the area and instructed him to get off the belt (Tr. 134-135). Respondent's counsel stipulated that the man was in an unsafe and hazardous position (Tr. 136).

On cross-examination, Mr. Juso stated that he believed the employee took it upon himself to position himself on the belt in the manner described and that company management did not require him to do so (Tr. 138). However, he believed that closer supervision would have prevented the man from straddling the belt (Tr. 139).

Respondent's Testimony

Plant administrator Robert Pyles confirmed that an employee was in fact straddling the belt in question. He also indicated that the employee would have received the normal written plant safety rules at the time of his initial employment. The man was a laborer and the maintenance department was performing work in the area at the time the citation issued. He conceded that the man was in an unsafe position and he (Pyles) reprimanded him, and the man positioned himself in an unsafe position contrary to the company's safety rules (Tr. 142-145).

Citation No. 103844 - Petitioner's Testimony

Inspector Juso confirmed that he issued the citation in question after observing two or three compressed gas cylinders belonging to a contractor who was building the new warehouse unsecured in a safe manner. The cylinders were lying on the ground and were not upright. The gauges on oxygen cylinders are capped, but acetylene cylinder gauges are merely recessed. He quoted the hazards involved in handling acetylene cylinders, including an explosion hazard, and he indicated that they are hazardous if not secured in an upright manner with a chain to prevent them from falling over as required by section 56.16.5. The cylinders were immediately removed from the property after Mr. Pyles instructed the contractor to do so (Tr. 189-192).

On cross-examination, Mr. Juso testified that he did not determine whether the cylinders were empty and capped and he indicated that he would not open the valves to make this determination. He indicated that oxygen tanks usually have a metal cap, but that acetylene tanks do not and the valve is recessed within the bottle. He made no determination as to whether the cylinders in question were empty, but indicated that it is possible that they were capped. He believed that the fact that they were capped or not is no indication that they are dangerous. The danger lies in the fact that they were lying down. However, if the respondent proved to him "on the spot" that they were empty, he would not have issued the citation because he treats all cylinders lying on the ground and not secured upright in the same manner. He did not ascertain from the contractor whether the cylinders were full or empty, and he indicated that it is seldom that any cylinder is completely empty (Tr. 192-195).

In response to bench questions, Mr. Juso stated the two cylinders were lying outside of the new warehouse which was under construction. He confirmed that he does not distinguish between full and empty cylinders, but also indicated that if the cylinder was completely empty, he would not have issued a citation. A determination can be made to ascertain whether a cylinder is full or empty and this is done by means of a gauge. When not in use, oxygen cylinders are capped, but acetylene tanks are not made for caps because the valves are recessed in the top of the bottle. The cylinders were not in an area where they were being used and they probably had been used and may have been half full or empty. Once they are used, the normal procedure is to secure them to a wall with a chain around the bottle so that it cannot fall over (Tr. 195-197).

Inspector Juso stated further that he could not recall whether the cylinders in question were capped and he made no effort to open the valve to determine whether they were empty (Tr. 198). He also indicated that oxygen cylinders "are not that dangerous lying down, but acetylene sure is" (Tr. 199). He also indicated that section 56.16-3 which states "materials that can create hazards if accidentally liberated from their containers shall be stored in a manner that minimizes the dangers" could

probably have been cited, but he indicated that the intent of this standard is for application "more or less" in cases involving chemicals (Tr. 200).

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Respondent's Testimony

Robert Pyles testified that he was with the inspector when the citation was issued. He confirmed that the two cylinders belonged to the contractor building a warehouse and indicated that they were both capped. The information he obtained from the contractor indicated that they had been used until they were empty (Tr. 200-201).

On cross-examination, Mr. Pyles stated that the contractor told him the cylinders were empty after the citation was issued. The cylinders had no gauges on them and were capped and lying on a 60- by 100-foot concrete pad and they were not bound together (Tr. 202). The fact that they were capped does not indicate whether they are full or empty (Tr. 203).

Citation No. 104890 - Petitioner's Testimony

MSHA inspector Theil D. Hill confirmed that he issued the citation in question after observing an employee using an automatic cutting torch cutting some metal, and while he was wearing safety glasses, he was not wearing a face shield to prevent particles from coming in on the sides of his face. Sparks were flying and the employee was not wearing a head shield over his safety glasses. The condition was abated after the employee was given goggles by the plant superintendent and instructed to wear them (Tr. 205-208).

On cross-examination, Mr. Hill stated that he could recall no conversation with the employee who was using the torch. He identified photographs of the torch mechanism in question (Exhibits R-10 and R-11) and indicated that the employee was not wearing goggles or a shield. He recalled that the employee sought him out after lunch but did not recall that he said he raised his goggles in order to see the torch shut-off valve. The inspector confirmed that one cannot see through the goggles and indicated that he has never operated an automatic torch. He observed no goggles, but two or three minutes after he called it to the attention of the supervisor, he was told they were provided and the employee had been instructed to wear them (Tr. 208-213).

Inspector Hill testified further that the safety glasses which were worn by the employee afforded some measure of protection from particles coming directly at him, but not from the side or the bottom (Tr. 218).

Respondent's Testimony

Robert Pyles stated that he investigated the citation but was not with Inspector Hill when he issued it. He determined that the employee saw Mr. Hill and a company official in the area and when he pulled his goggles off his hat to reach down and turn the torch valve off, the torch was still burning but the metal had already been cut through (Tr. 222).

MSHA inspector Thiel D. Hill confirmed that he issued the citation in question after observing that the clinker stockpile was not trimmed properly. This condition created a 20-foot high overhang and a loader had been working in the overhang area. It appeared to him that a loader had been removing material from the stockpile and had dug out under it, thereby creating an overhang. The overhang was approximately 8 to 10 feet in length and approximately 20 feet high. The condition was abated by taking the overhang down, but he does not know how this was done, and when he returned to the area to abate the citation, the overhang had been taken away (Tr. 223-225).

On cross-examination, Inspector Hill testified that he observed no equipment used to take material from the stockpile anywhere near the overhang area, and while it rained for 2 days prior, he saw tracks which appeared relatively fresh. He did not know when material was last taken from the stockpile prior to his arrival on the scene, and he was unaware that any records are kept in this regard. The tracks he observed went under the overhang and in the vicinity where the overhang was created. The tracks led him to believe that the overhang had been created by material being removed by a machine rather than being washed out by the rain water. However, this makes no difference since the standard requires that once an overhang is created, it shall be trimmed (Tr. 225-229).

#### Respondent's Testimony

Al Simon testified that he was with Mr. Hill when the citation was issued. He stated that the overhang was created by a wash-out which occurred a day or two prior to the inspection. Overhang are normally taken care of by knocking the lip off from the bottom with a front-end loader or by pushing it down from the top with a bulldozer. Personnel or equipment are never placed under an overhang (Tr. 229-231).

In response to bench question, Mr. Simon stated that he advised Mr. Hill that the overhang had been washed out and that this was the first time he had observed it. It was immediately knocked down but Mr. Hill later issued the citation. Mr. Simon did not recall Mr. Hill mentioning the sight of any tracks and Mr. Simon saw none. He indicated that the last time the area was worked was the Thursday or Friday before the citation was issued. Material is normally removed from the stockpile with a front-end loader and the operator is usually seated 25 to 30 feet back from any overhang (Tr. 231- 234).

#### Fact of Violation - Citation 103839

Respondent argued that a safe means of access was in fact provided in this case since the location where the crane was parked was no different than if it had been stopped at one of the gate locations. Respondent maintains that there was no space between the landing and the crane for one to fall through and

that climbing from the crane through the landing handrail is no different than opening the gate and walking through (Tr. 119-123).

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Respondent moved for dismissal of the citation on the ground that the inspector did not actually observe anyone leaving the crane at the location where it was parked, and the motion was taken under advisement at the hearing (Tr. 238).

Although petitioner concedes that the inspector observed no one leaving the crane at the location where it was parked, its position is that since there was no gate at that location, the crane operator had to get off by climbing through or over the handrail, and since the inspector apparently saw no safety belt or line, the operator was not "tied on", and the inspector's assumption, based on what an unidentified mill employee told him, is sufficient to establish a violation (Tr. 130-132).

Section 56.11-1 requires that a safe means of access shall be provided and maintained to all working places. The testimony establishes, and the parties are seemingly in agreement, that the gates provided at the third floor landing were installed for the purpose of facilitating access to and from the crane by the operator. Therefore, it seems clear to me that respondent was in compliance with the requirements of the standard since the gates were in fact installed for that purpose. In fact, the condition described by the inspector on the face of the citation assumes this the inspector found that safe access was in fact provided. The alleged violation lies in the inspector's belief that the crane operator did not use the gate to exit from the crane on the day he observed the crane parked at a location other than next to the gate. Since the evidence established that the only way the operator of the crane can leave it is by means of protected walkway and ladder on top of the crane, I have to assume that this was the method used by the operator to leave the crane. However, since the crane was not parked by the gate, I can also assume by a credible inference that the crane operator exited the crane by either climbing over or through the hand railing located next to the crane. The critical question is whether that method of exit is ipso facto an unsafe act and contrary to the cited standard. I think not. Since the inspector failed to interview the crane operator, or develop any evidence as to how he may have exited the crane on the day in question, I have no basis for determining whether the method used was safe or unsafe. Since a safe means of access was in fact provided, I conclude and find that respondent was in compliance and that petitioner has failed to provide any competent and credible evidence establishing a violation as charged in the citation. Accordingly, the citation is VACATED.

Fact of Violation - Citation No. 103840

Respondent conceded the fact of violation concerning Citation No. 103840, and did not dispute the fact that a man was in an unsafe position. Respondent's defense is that he was disciplined and that respondent could not possibly reasonably prevent an employee from placing himself in danger by doing an unauthorized act (Tr. 146).

Section 56.11-1 requires that a safe means of access be

provided and maintained to all working places. Since the evidence establishes that the



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individual was performing some work on the belt it seems clear that his position straddling the belt was at a working place and that his climbing on the belt and placing himself in such a precarious position was obviously not a safe means of access to the belt portion that he is working on. I conclude and find that the petitioner has established a violation and the citation is AFFIRMED.

#### Gravity

The respondent concedes that the individual in question was in a hazardous and dangerous position on the belt and I find that the violation is serious and exposed the man to serious injury since the belt was running.

#### Negligence

Respondent has established that the individual who was on the belt acted contrary to respondent's safety rules and policies and that his positioning himself astride a moving belt was an unauthorized act. Under these circumstances, I cannot conclude that the respondent was negligent and I do not believe that as a general rule close supervision of an employee can prevent an employee from performing a foolhardy act in complete disregard for his own safety.

#### Fact of Violation - Citation No. 103844

Petitioner argued that the intent of the standard cited is to secure all cylinders regardless of whether they are full or empty (Tr. 199). Respondent takes the position that petitioner offered no proof that the cylinders were not safe, and maintains that since they were capped there is no proof that they were not empty. Further, respondent argues that if the cylinders were empty, admittedly, they were safe (Tr. 198).

Section 56.16-5 requires that compressed and liquid gas cylinders be secured in a safe manner. Petitioner has established that the cylinders in question were not secured but were in fact lying free and unsecured. Respondent does not dispute this fact. The standard cited makes no distinction between full or empty cylinders and respondent's defense in this regard is rejected. The citation is AFFIRMED.

#### Gravity

The inspector failed to determine whether the cylinders were full or empty. Under the circumstance, I conclude that petitioner has not established that the violation presented a serious hazard. Accordingly, I find that the violation is nonserious.

#### Negligence

The evidence establishes that the two cylinders in question were the property of a contractor who was performing some

construction work. Petitioner presented no evidence that respondent knew or should have known that

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the cylinders were not secured. Under the circumstances, I can only conclude that respondent was not negligent.

Fact of Violation - Citation No. 104890

Respondent's defense to this citation rests on its assertion that at the time in question the employee who was using the cutting machine had protective glasses and that he was finished cutting and was simply turning off the cutting machine valve when the inspector observed him (Tr. 223).

Section 56.15-7 requires that face-shields or goggles be worn when welding or cutting is taking place. The inspector's testimony that the employee in question was wearing ordinary safety glasses, with no protection to prevent particles from striking him from the side or beneath the glasses, is unrebutted by the respondent. While the use of ordinary safety glasses may have afforded some protection for the employee, it seems clear from the evidence presented that the inspector observed no goggles or a shield being worn or in the possession of the employee at the time he observed him working at the cutting machine. Although Mr. Pyles testified to his after-the-fact investigation, it is clear that he was not present on the day in question. Further, although the inspector indicated that he called the infraction to the attention of a supervisor on the scene and that the supervisor told him he provided the employee with goggles to abate the citation, the supervisor did not testify, and neither did the employee. In these circumstances, I conclude and find that petitioner has established a violation and the citation is AFFIRMED.

Gravity

The inspector testified he observed sparks flying while the employee in question was at the cutting machine, and failure to wear goggles or a protective shield exposed the employee to a potential injury. I find that the violation is serious.

Negligence

I find that the violation resulted from respondent's failure to exercise reasonable care to prevent the cited condition. The inspector testified that a supervisor was in the area and I conclude that closer supervision may have detected the infraction before the inspector arrived on the scene. I find the citation resulted from ordinary negligence.

Fact of Violation - Citation No. 104892

Section 56.9-61 requires that stockpiles be trimmed to prevent hazards to personnel. Respondent's defense seems to be that the overhang observed by the inspector was created by natural causes, namely, heavy rains which occurred for 2 days prior to the inspection. However, the standard makes no distinction as to whether a hazard is created by natural causes or by a machine such as a loader. Further, respondent has not

rebutted the fact that

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an over-hang did in fact exist. As a matter of fact, Mr. Simon testified he observed the over-hang and had it knocked down immediately. I find that petitioner has established a violation and the citation is AFFIRMED.

#### Gravity

I find no credible evidence to support a conclusion that anyone was exposed to the hazardous over-hang and I accept the testimony of Mr. Simons that a loader operator, in the normal course of loading, is positioned in a manner which removes him from any such hazard. Absent any evidence that men were working under the over-hang on the day in question, I can only conclude that the condition cited was nonserious and that is my finding.

#### Negligence

I find Mr. Simon's testimony that he observed the over-hang for the first time at the time the inspector observed it and that he took immediate corrective action to be credible. I also accept his testimony that he observed no tracks or equipment in the area at the time the citation issued. Under the circumstances, I can find no credible evidence or testimony to support a conclusion that respondent was negligent, I find that there is no competent or credible evidence indicating any negligence by the respondent and that is my finding.

#### Findings and Conclusions Applicable to Both Dockets

#### History of Prior Violations

Petitioner asserts that respondent has an "average" history of prior violations, but submitted no computer printout or other evidence as to the extent of this history (Tr. 236). Petitioner conceded that after consulting with the inspectors, no great number of violations have been issued at the mining operation in question, and petitioner further conceded that under the 1977 Act, respondent has no prior history of violations at the mine in question since the inspection in question was the first one under the new law at the facility (Tr. 236).

I conclude that for purposes of civil penalty assessments in these proceedings, respondent has no prior history of violations which would warrant any increase in the penalty assessments imposed by me for the citations which have been affirmed.

#### Size of Business and Effect of Civil Penalties on Respondent's Ability to Remain in Business

The parties agreed that the mine in question employed 162 employees and that annual production is 600,000 tons of marl, the basic substance used to produce cement, and that annual production for the respondent as a whole was some four million tons. I conclude that respondent is a large operator and that its mining operation at the quarry and mill in question was medium in scope.

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Respondent does not contend that the assessment of civil penalties will adversely affect its ability to remain in business and I conclude they will not.

#### Good Faith Compliance

The evidence adduced establishes that respondent demonstrated good faith abatement in correcting all of the citations in issue in these proceedings. Further, with regard to citation Nos. 104892, 103844, and 103821, the evidence establishes that they were rapidly abated, and this fact has been taken into consideration in the civil penalties assessed.

#### Penalty Assessments

On the basis of the foregoing findings and conclusions made in these proceedings, civil penalties are assessed for each citation which has been affirmed as follows:

Docket No. SE 79-16-M

Citation No.	Date	30 C.F.R. Section	Assessment
103821	7/25/78	56.9-87	\$ 35
103824	7/25/78	56.14-1	50
103827	7/25/78	56.14-1	50
103830	7/25/78	56.14-1	50

On the basis of the foregoing findings and conclusions made in these proceedings, Citation No. 103843, July 27, 1978, is VACATED.

Docket No. BARB 79-266-PM

Citation No.	Date	30 C.F.R. Section	Assessment
103840	7/26/78	56.11-1	\$ 50
103844	7/27/78	56.16.5	20
104890	7/27/78	56.15-7	35
104892	7/27/78	56.9-61	15

On the basis of the foregoing findings and conclusions made in these proceedings, Citation No. 103839, July 26, is VACATED.

#### ORDER

The respondent is ORDERED to pay the civil penalties assessed by me in these proceedings, in the amount shown above, within thirty (30) days of the date of these decisions.

George A. Koutras  
Administrative Law Judge