

CCASE:
SOL (MSHA) V. PHELPS DODGE
DDATE:
19801017
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

PHELPS DODGE CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NOS. CENT 79-188-M
CENT 79-189-M
CENT 79-190-M
CENT 79-191-M
(CONSOLIDATED)

Mine: TYRONE MINE & MILL

DECISION

APPEARANCES:

Marigny A. Lanier, Esq., Office of the Solicitor, United States
Department of Labor, 555 Griffin Square Building, Suite 501,
Dallas, Texas 75202,
For the Petitioner

Stephen W. Pogson, Esq., EVANS, KITCHEL & JENCKES, P.C., 363
North First Avenue, Phoenix, Arizona 85003,
For the Respondent

Before: John A. Carlson, Judge

INTRODUCTION

This case, heard under the provisions of the Federal Mine Safety and Health Act of 1977 [hereinafter the "Act"], arose out of inspections conducted between January 31 and February 15, 1979 at respondent's mine near Tyrone, New Mexico. As a result of those inspections, thirty citations were issued.(FOOTNOTE 1) A hearing on the merits was held in Albuquerque, New Mexico. Jurisdiction was not contested. Respondent filed a post-hearing brief. Petitioner waived his right to do so.

Of the eleven citations actually tried, six concerned alleged "equipment defects affecting [the] safety" of several vehicles.(FOOTNOTE 2) These citations will be addressed together. The others will be addressed individually.

DISCUSSION:

(1) Citation 46 -- Faulty Brakes.

This citation charges that respondent violated 30 C.F.R. 55.9-3(FOOTNOTE 3) by allowing a truck (#127) with faulty brakes to continue operating. Respondent concedes that the standard was violated (respondent's brief at 2), but argues that the proposed penalty of \$445.00 is unreasonable.

The parties stipulated that respondent operates a relatively large mine and has a relatively favorable safety record.(FOOTNOTE 4) The gravity of the violation was high. If the brakes had failed, the truck could have struck another vehicle or person (Tr. 76). The inspector testified that respondent should have known of the violation because reports had previously indicated that the air brakes on the truck were not working properly (Tr. 77). The probability of harm was high because the truck was being used to haul heavy loads of ore; if it took ninety feet to stop the truck while empty, it would take a considerably greater distance to stop the truck while loaded (Tr. 78). Although respondent abated the violation in good faith (Tr. 79-80), the violation resulted from respondent's negligence and could have easily caused serious harm For these reasons, I find that \$400.00 is an appropriate penalty.

(2) Citation 43 -- Illumination

Citation 43 charges that respondent violated 30 C.F.R. 55.17-1(FOOTNOTE 5) because there was insufficient lighting to provide safe access to a dust

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collector and hoist room facility. The uncontradicted testimony of the inspector is that on January 31, 1979, at 8:45 p.m., the mercury vapor light above the stairway and two lights on the southside of the platform at the top of the stairway were out (Tr. 20; See exhibit R-1). (FOOTNOTE 6) Employees, he maintained, would have to use a flashlight to work on the dust control system or in the hoist room, and might trip on the stairway en route to these facilities (Tr. 21 - 22).

Respondent contends that the lights which remained operable at the time of inspection provided sufficient illumination. In support of this position, respondent stresses the fact that the inspector's conclusion was only a "judgement call" and was not based on a scientific test, e.g., a light meter reading (Tr. 45; respondent's brief at 4). Respondent also points out that only on rare occasions did employees work in the dust collector area at night and that those who did could easily obtain flashlights (Tr. 43, 45, 106, 117 - 119). Finally, respondent stresses the testimony of its former safety inspector, Nicholas Armijo, that he was able to see across the platform located at the top of the stairway (Tr. 103, 107).

The standard does not specify a minimum quantity of illumination, nor should it. By requiring "sufficient illumination . . .," the standard provides necessary flexibility in ensuring safe access under different conditions. It is not necessary to use a light meter to determine whether there is enough light to walk safely up and down a stairway. For example, evidence that an inspector, standing at the base of a stairway, could not see the third step would be strong proof that the stairway was unsafe.

Petitioner, however, presented no such evidence of the inspector's observations. Although the inspector testified that three of six lights were not operating, we do not know how far and how clearly the inspector, or anyone else, could see up the stairway and across the platform. We have only the inspector's belief of a tripping hazard, unsupported by evidentiary detail, poised against the equally conclusory belief of respondent's witnesses that the light level was safe. (The fact that a flashlight would be needed to work on the dust collector or hoist apparatus says nothing about whether there was enough light to walk up and down the stairway and across the platform.) The burden of proof lay with the Secretary. The preponderant evidence failed to support that burden.

The citation is vacated for lack of proof.

(3) Citation Number 52 -- Exposed Wires:

(a) Violation:

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This citation charges that respondent violated 30 C.F.R. 55.12-32(FOOTNOTE 7) by failing to keep the electrical leads on a 120 volt AC-DC converter insulated (See Tr. 27). That the leads were exposed is undisputed (Tr. 170, 184). Respondent argues that the likelihood of injury was low because the machine was not used regularly and was not in use when inspected (Tr. 28, 48). The frequency of use, however, is not relevant to a determination of whether the standard was violated. The machine was available for use and was used periodically (Tr. 28, 176). Respondent also argues that the machine is used only for testing purposes and therefore requires a relatively modest current (Tr. 160-162, 181; respondent's brief at 9). This argument relates to the gravity of the violation and not to its existence. Finally, respondent contends that a passerby could not accidentally brush up against the machine and make contact with the wires (Tr. 162-163; respondent's brief at 9). A person could trip and fall across the machine, however (Tr. 29).

Respondent made no showing that the machine was being tested or repaired. The standard requires that at all other times cover plates be kept in place. Respondent's electrical foreman testified that leads are protected by insulation, not cover plates, and that the leads on this machine were exposed (Tr. 175-176).

(b) Penalty:

The gravity of this violation was relatively low because the machine operated on a low current; resulting injury was improbable since the machine was used only occasionally and few people would be exposed; the violation was promptly abated (Tr. 30). Under these circumstances an appropriate penalty is \$25.00.

4. Citation Number 48 -- Unattended Truck:

(a). Violation:

This citation charges that respondent violated 30 C.F.R. 55.9-37(FOOTNOTE 8) by leaving a truck unattended, parked on a grade without blocking the wheels or turning them toward the bank or berm.

As respondent concedes, there are no material facts in dispute (see respondent's brief at 6). A truck was left unattended on the side of a

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road. The road was graded at five to eight percent. The wheels of the truck were neither blocked nor turned towards a bank or berm.

Respondent argues that the position of the truck presented no hazard because the truck, if hit by another vehicle, would have to travel 900 feet and negotiate turns on its own before colliding with the electrical shop, the closest work area (Tr. 114 - 115; respondent's brief at 6 - 7). Although the likelihood of the truck striking the electrical shop is small, the unattended truck presented other hazards. The road is used by other vehicles. If the unattended truck were struck it could, in turn, strike another vehicle or person.

(b) Penalty:

The gravity of this violation is somewhat unclear (Tr. 67). Potentially, of course, the truck, if dislodged, could kill someone (Tr. 67). The probability of that occurrence was slight, however. Although the road was slippery, the truck was in park and the emergency brake was engaged (Tr. 26 - 27; 45 - 46). Respondent was negligent in allowing the violation to exist since the truck was clearly visible (see Tr. 26). There is no evidence, however, indicating how long the truck remained unattended and how often respondent's supervisory personnel had occasion to observe the truck's position. The violation was abated immediately (Tr. 27). For these reasons an appropriate penalty is \$14.00.

5. Citation Number 80 -- Working on Crane-Rail Platform without a Safety Line:

(a) Violation:

This citation charges that respondent violated 30 C.F.R. 55.15-5(FOOTNOTE 9) because one of its employees was observed walking on the overhead crane tracks sixteen feet above the floor in the electrical shop.

The electrical shop is a rectangular building. A crane-rail (a long, narrow-gauge steel track two to three inches wide) traces the length-sides of the building approximately sixteen feet above the floor (Tr. 187). The rail extends three feet over two elevated storage areas which span the width-sides of the building (Tr. 170; exhibits P-1 and R-8). Directly underneath the rail is a platform about ten inches wide (Tr. 165 - 166, 185), leaving about 3 1/2 inches of platform area on either side of the rails (Tr. 185).

Approximately two and a half feet below the crane-rail platform is another "platform" which is actually a beam within the wall structure; a horizontal distance of about ten inches separates the two platforms (Tr. 168 - 169).

The undisputed facts are that Randy Lemke, one of respondent's employees, stepped from a storage level onto the rail platform and walked approximately twenty feet along the rail platform straddling the rail, without a safety line, until he reached a cable hanging on the wall (Tr. 174, 183 - 185; also see exhibit R-8). When he reached the cable, Mr. Lemke stepped from the crane rail platform down to the beam (Tr. 166). He then reached down to the cable and pulled up the slack while a man on the floor pulled the cable to the floor (Tr. 166). After unhooking the cable, Mr. Lemke returned to the storage platform by walking along the crane rail platform, again without a safety line (Tr. 186).

The evidence conflicts in three respects. First, Inspector Akers testified he saw no handrails alongside the rails (Tr. 40); Mr. Lemke claims there were handrails (Tr. 184). The inspector's testimony is corroborated by respondent's exhibit number eight: it reveals no handrails alongside the crane-rail. Second, Inspector Akers testified that he saw Mr. Lemke handling the cable at the same time that the man on the floor was pulling it (Tr. 53); Mr. Lemke claims he was not holding the cable while it was being pulled to the ground. Even if Mr. Lemke is correct, there remains the danger of his falling while he walked along the crane-rail platform without a safety line. Third, Mr. Lemke claims that he had a purlin(FOOTNOTE 10) to hold onto while untangling the cable (Tr. 167); the inspector testified that he saw Mr. Lemke leaning against the wall with one hand (Tr. 35; respondent's brief at 16). Respondent also argues that Mr. Lemke was not in danger of falling while unhooking the cable because he was flanked on three sides by the wall, a roof support and the crane rail platform (Tr. 166, 167; also see exhibit R-8 and respondent's brief at 16). Mr. Lemke admits, however, that he could have fallen through the remaining empty space (Tr. 168; also see exhibit R-8). Furthermore, these conditions do not eliminate the danger posed by walking along the crane-rail platform without a safety line; and with regard to that danger, it is most significant that Mr. Lemke admitted his failure to use a safety line.

(b) Penalty:

The gravity of this violation is relatively high. If Mr. Lemke had fallen from the crane rail, he could have received serious injuries (see Tr. 41). The probability of injury was also relatively high. Mr. Lemke was straddling the rail, leaving himself only 3 1/2 inches of platform on either side of the rail on which to walk (Tr. 185). If Mr. Lemke were distracted or for some reason lost his balance for a moment, he could have easily fallen. The circumstances of the violation suggest that respondent was negligent in allowing it to occur. The foreman was in the immediate area at the time (Tr. 41); the workman on the floor certainly must have seen Mr. Lemke walking on the elevated platform without a safety line; and I must believe that a reasonable person in Mr. Lemke's position would have been aware of the danger of falling, despite Mr. Lemke's claims to the contrary (Tr. 167, 184). For these reasons I find that an

appropriate penalty is \$180.00.

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(6) Citation Numbers 47, 58, 62, 64, 68, 79 -- Vehicle Defects Affecting Safety.

(a) Violations:

These citations allege that respondent violated 30 C.F.R. 55.9.2(FOOTNOTE 11) because it allowed vehicles to operate with safety defects. Respondent concedes the existence of the defects, but contends that they did not affect safety. In that regard, respondent argues that the determination of whether a defect affects safety involves judgment, and that, therefore, a violation cannot be proven by "subjective evidence" unless the safety risk(s) presented could not be reasonably questioned (respondent's brief at 10). Respondent voices concern that "[a] decision to the contrary would necessarily base violation solely on the unsupported conclusions of inspectors" (respondent's brief at 10).

A similar argument has already been rejected (see page 3, supra). The language of the standard provides flexibility necessary to ensure the safe operation of complex machinery. It would be impossible to draft enough "objective" standards to address all conceivable safety hazards. Of course the standard involves judgment. But that judgment is substantiated not by "unsupported conclusions", as respondent asserts, but by the inspectors' observations and expertise, and in some cases, by the admissions of respondent's witnesses as well. It is unnecessary to recount the five pages of testimony establishing Mr. Diggs' qualifications as a mechanic and mine inspector (See Tr. 59 - 64).

Respondent also argues that the defects involved here have never caused an accident at its mine (respondent's brief at 12). This fact does not relate to the existence of a safety risk but to the probability that it will result in injury; it is therefore a factor to be considered in ascertaining an appropriate penalty.

Citation 47 charges that a steering arm bushing on one of respondent's vehicles was loose. Inspector Diggs testified that the bushings were so worn that he was able to observe lateral movement of the wheels and steering wheel (Tr. 80 - 81).

Respondent relies on testimony of its experts, Mr. Leonard Duncan and Mr. John Wylie, in arguing that the defective bushings did not affect safety (respondent's brief at 13). Mr. Duncan testified that, under most circumstances, if the bushing were to break, the affected wheel would trail the others (Tr. 126). He admitted, however, that under some circumstances, particularly if the truck were moving in reverse, the broken wheel would not follow the others (Tr. 136 - 137). Mr. Duncan also admitted, as did Mr. Wylie, that if the broken wheel did not trail the others, the driver could lose control of the steering (Tr. 138, 148, 152 - 153).

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Mr. Wylie testified that the breaking of ball joints and bushings is generally caused by impact rather than gradual wear and that "to the best of his knowledge," no ball joint had been destroyed by excessive wear (Tr. 147, 149). Assuming this opinion to be accurate, it does not entirely discount the risk of breakage due to excessive wear. Furthermore, the loose bushing, without breaking, presented a safety hazard. The lateral movement of wheels on a one hundred ton truck traveling over muddy roads with pot holes clearly presents a safety hazard (see Tr. 80 - 82).

Citations 58 and 62 also concern loose ball joints and bushings. Respondent argues that the rain and snow washed the grease from the joints and caused the joints to loosen (Tr. 130, 155; respondent's brief at 13 - 14). This condition does not justify the defect; it simply suggests a possible cause and the need to grease the joints more often.

Respondent also relies on Mr. Wylie's opinion that the ball joint was not loose enough to be dangerous (Tr. 149 - 150; respondent's brief at 14). Mr. Wylie observed the steering arm only after it had been removed from the vehicle, however (Tr. 149). Inspector Diggs observed the ball joint from the undercarriage of the steering while the driver maneuvered the steering mechanism (Tr. 85). He was, therefore, in a better position to observe the effect of the loose ball joint on the steering mechanism.

Inspector Diggs issued the citations because he thought that the loose parts, together with the rough roads, presented a safety hazard (Tr. 85 - 86). Although Inspector Diggs apparently agreed with Mr. Wylie that the immediate cause of ball joint and bushing breakage is hard impact, he issued the citation because he thought that the loose condition of joints and bushings is a contributing cause of breakage (Tr. 101). This opinion is to some extent corroborated by Mr. Duncan's admission that excessive wear can affect the safe operation of a vehicle (Tr. 139 - 140); the opinion is not contradicted by Mr. Wylie's view that excessive wear by itself cannot cause breakage.

Citation number 64 involves a suspension spring which Inspector Diggs observed to be broken. Mr. Diggs also observed tire marks on an inner fender well caused by the rubbing of the right front tire. He issued the citation because if the truck hit a bump, the wheel could be wedged against the fender well and cause the driver to lose control (Tr. 87) -- a strong possibility considering the poor condition of the roads.

Respondent raises no credible defense.

Citation number 68 involves a loose idler arm on one of respondent's trucks. Inspector Diggs testified that he saw the part "just flopping" when the driver shook the steering wheel (Tr. 88), and issued the citation because the idler arm could "pull loose" under the stress of travelling over rough roads and cause a loss of steering (Tr. 88).

Mr. Duncan testified that the wet weather caused the defect. The point is immaterial because the effect of the defect, not the cause, is at issue under this standard. Mr. Wylie's opinion that the defect did not affect safety is poorly founded because he examined the idler arm after it had been removed from the truck (Tr. 151 - 152).

(b) Penalty:

The gravity of these violations is relatively high because they all affect the ability to control large vehicles. The violations were abated promptly.

Petitioner presented evidence to show that respondent was negligent in failing to prevent these violations. There was testimony that respondent had relied on state inspections and became lax when they were discontinued (Tr. 83). Respondent, however, presented evidence that it did not overly rely upon state inspections because they covered only brakes and lights (Tr. 124 - 125, 147). There was also testimony that the trucks were inspected and maintained regularly, suggesting that respondent should have detected the defects (Tr. 123, 146). There was no evidence, however, indicating when the trucks involved here were last inspected. In short, the evidence concerning respondent's negligence is inconclusive.

For the reasons discussed above, I find that an appropriate penalty for each of these violations is \$100.00.

Respondent concedes that it violated 30 C.F.R. 55.9-2, as alleged in Citation 79, by failing to maintain the automatic reverse alarm on one of its trucks in operating condition. It contends, however, that the proposed penalty of \$40.00 is unreasonable.

The gravity of the violation and the negligence suggested by the circumstances of the violation support the imposition of a \$40.00 penalty notwithstanding respondent's prompt abatement. The violation could have resulted in serious harm or death (See Tr. 34); and the probability of an accident occurring was fairly high since the driver's rear, view was obstructed by oil drums and equipment sitting in the truck's bed (Tr. 30, 32). The violation must have been apparent to the driver of the truck, suggesting at least some negligence on respondent's part.

FINDINGS OF FACT

(1) Respondent owns a mine near Tyrone, New Mexico. The mine was inspected between January 31 and February 15, 1979.

(2) Although several lights outside respondent's dust collector and hoist room facility were not working, no evidence was presented to show that the existing illumination was insufficient to provide safe access to the facility.

(3) The leads on top of respondent's AC - DC converter were exposed and thus presented a danger of electrical shock to workers making contact with them. Although the converter was not in use when it was inspected, it was available for use and was not being tested or repaired.

(4) One of respondent's trucks was left unattended on the side of a road graded at five to eight percent. The wheels were

neither blocked nor turned towards a bank or berm. The truck, if struck by another vehicle, thus presented a risk of harm to persons walking or driving vehicles along the road.

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(5) A crane-rail spans the length of respondent's electrical shop sixteen feet above the floor. A platform ten inches wide lies directly underneath the rail. One of respondent's employee walked along the platform, without a safety line, while straddling the rail.

(6) Steering arm bushings and ball joints on several of respondent's vehicles were loose, causing lateral movement of the wheels and steering wheel, and creating a risk that the driver might lose control of the vehicle.

(7) The suspension spring on one of respondent's trucks was broken. There were marks on the inside of the fender well where the tire had begun to rub against the fender. If the truck were jarred by a bump in the road, the tire could easily become wedged in the fender well and cause a loss of control over the vehicle.

CONCLUSIONS OF LAW

(1) The Commission has jurisdiction to decide this case.

(2) Respondent violated 30 C.F.R. 55.9-3 as alleged in Citation 162046.

(3) Respondent did not violate 30 C.F.R. 55.17-1 as alleged in Citation 162043.

(4) Respondent violated 30 C.F.R. 55.12-32 as charged in Citation 162052.

(5) Respondent violated 30 C.F.R. 55.9-37 as charged in Citation 162048.

(6) Respondent violated 30 C.F.R. 55.15-5 as charged in Citation 162080.

(7) Respondent violated 30 C.F.R. 55.9-2 as alleged in Citations 162047, 162058, 162062, 162064, 162068 and 162079.

ORDER

Pursuant to the foregoing, it is ORDERED that Citation 162043 is vacated, and that Citations 162046 and 162079, on the basis of the parties' stipulations, are affirmed. It is further ORDERED that all other citations which were actually tried are affirmed.

In connection with the citations which have been affirmed, the following penalties are ORDERED assessed:

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DOCKET NUMBER CENT 79-188-M

Citation Number 162047:	\$100.00	Citation Number 162058:	\$100.00
Citation Number 162048:	\$ 25.00	Citation Number 162062:	\$100.00
Citation Number 162052:	\$ 14.00	Citation Number 162064:	\$100.00

DOCKET NUMBER CENT 79-189-M

Citation Number 162068:	\$100.00	Citation Number 162079:	\$ 40.00
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DOCKET NUMBER CENT 79-191-M

Citation Number 162046:	\$400.00	Citation Number 162080:	\$180.00
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TOTAL: \$1,159.00

In connection with several other citations, petitioner has moved for approval of a partial settlement agreement made with respondent. The agreement provides for the reduction of proposed penalties as follows:

DOCKET NUMBER CENT 79-188-M

Citation Number 162044:	From \$ 36.00 to \$ 27.00
Citation Number 162054:	Withdrawn
Citation Number 162057:	From \$114.00 to \$ 85.50
Citation Number 162059:	From \$ 72.00 to \$ 54.00
Citation Number 162063:	From \$ 90.00 to \$ 67.50

DOCKET NUMBER CENT 79-189-M

Citation Number 162065:	From \$ 78.00 to \$ 58.50
Citation Number 162067:	From \$ 90.00 to \$ 67.50
Citation Number 162069:	From \$ 90.00 to \$ 67.50
Citation Number 162070:	From \$130.00 to \$ 97.00
Citation Number 162072:	From \$ 90.00 to \$ 67.50
Citation Number 162073:	From \$ 90.00 to \$ 67.50
Citation Number 162075:	From \$ 90.00 to \$ 67.50
Citation Number 162076:	From \$ 90.00 to \$ 67.50
Citation Number 162077:	From \$ 90.00 to \$ 67.50
Citation Number 162085:	From \$ 72.00 to \$ 54.00
Citation Number 162087:	From \$ 72.00 to \$ 54.00

DOCKET NUMBER CENT 79-190-M

Citation Number 162089:	From \$ 84.00 to \$ 63.00
Citation Number 162090:	From \$ 90.00 to \$ 67.50

TOTAL: \$1,101.00

The written motion and the record developed at the hearing provide documented information relating to the statutory penalty criteria set out in Section 110(i) of the Act. The motion specifically states that Citation 162054 was withdrawn because the equipment which was cited had been scheduled for repairs and taken out of service before it was inspected.

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Upon due consideration I conclude that the proposed settlement is consistent with the purposes of the Act and should be approved.

Accordingly, petitioner's motion is granted and the settlement agreement is ORDERED approved.

In addition to the written motion, petitioner orally moved for approval of withdrawal of Citation 162081 at the outset of the hearing (Tr. 6). Petitioner justified the withdrawal on the ground that its proof would not support a violation of the cited standard (see Tr. 7). The motion to withdraw was granted (Tr. 8).

If the agreed penalties have not previously been paid, respondent is ORDERED to pay the sum of \$1,101.00, together with the assessed penalty sum of \$1,159.00, within 30 days of this order.

John A. Carlson
Administrative Law Judge

~FOOTNOTE_ONE

1 Of the thirty citations issued, only eleven were actually tried. The parties reached an agreed disposition of seventeen citations and petitioner withdrew two citations.

~FOOTNOTE_TWO

2 These citations charged that respondent had violated 30 C.F.R. 55.9-2 which provides:

Mandatory. Equipment defects affecting safety shall be corrected before the equipment is used.

~FOOTNOTE_THREE

3 30 C.F.R. 55.9-3 provides:

Mandatory. Powered mobile equipment shall be provided with adequate brakes.

~FOOTNOTE_FOUR

4 Joint exhibit #2 shows that respondent's mine produced 875,688 tons in 1977 and 1,064,340 tons in 1978 (Tr. 8). These figures indicate that respondent operates a relatively large mine.

The same exhibit shows that in the two years prior to the inspection involved in this case respondent had been inspected eleven days and received five citation (Tr. 8). These figures indicate that respondent has a history of relatively few violations.

In accordance with 110(i) of the Act, these stipulations will be considered together with the four other statutory criteria in determining appropriate penalties for other violations proved in this case.

~FOOTNOTE_FIVE

5 30 C.F.R. 55.17-1 provides:

Mandatory. Illumination sufficient to provide safe

working conditions shall be provided in and on all surface structures, paths, walkways, stairways, switch panels, loading and dumping sites, and work areas.

~FOOTNOTE_SIX

6 In R-1 the circles represent lights which were operating during the inspection; the arrows represent lights which were not working (Tr. 104).

~FOOTNOTE_SEVEN

7 30 C.F.R. 55.12-32 provides:

Mandatory. Inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs.

~FOOTNOTE_EIGHT

8 30 C.F.R. 55.9-37 provides:

Mandatory. Mobile equipment shall not be left unattended unless the brakes are set. Mobile equipment with wheels or tracks, when parked on a grade, shall be either blocked or turned into a bank or rib; and the bucket or blade lowered to the ground to prevent movement.

~FOOTNOTE_NINE

9 30 C.F.R. 55.15-5 provides:

Mandatory: Safety belts and lines shall be worn when men work where there is a danger of falling; a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered.

~FOOTNOTE_TEN

10 A purlin is an upturned brace that is fastened to the roof support arches (Tr. 167).

~FOOTNOTE_ELEVEN

11 30 C.F.R. 55.9-2 provides:

Mandatory. Equipment defects affecting safety shall be corrected before the equipment is used.