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

QUARTO MINING COMPANY, CONTESTANT	Contest of Orders
	Docket No. LAKE 81-118-R
v.	Order No. 1121181; 3/2/81
	Docket No. LAKE 81-119-R
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Order No. 1121182; 3/2/81
	Docket No. LAKE 81-120-R Order No. 1121183; 3/2/81
	Docket No. LAKE 81-121-R Order No. 1121185; 3/2/81
	Docket No. LAKE 81-122-R Order No. 1124038; 3/2/81
	Docket No. LAKE 81-123-R Order No. 1124039; 3/2/81
	Docket No. LAKE 81-124-R Order No. 1124040; 3/2/81
	Docket No. LAKE 81-125-R Order No. 1124041; 3/2/81
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceedings
	Docket No. LAKE 81-147 A.C. No. 33-01157-03250-V
v.	Docket No. LAKE 81-148 A.C. No. 33-01157-03251
QUARTO MINING COMPANY, RESPONDENT	Powhatan No. 4 Mine

DECISION

Appearances: John T. Scott, III, Esq., Crowell & Moring, Washington, DC for Contestant/Respondent, Quarto Mining Company
Patrick M. Zohn, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, PA for Respondent/Petitioner, MSHA

Before: Judge Merlin

Statement of the Case

The first eight docket numbers captioned above are notices of contest filed by Quarto Mining Company under section 105(d) of the Act to challenge the validity of eight orders of withdrawal issued by two inspectors of the Mine Safety and Health Administration for alleged violations of 30 CFR 75.1003-2. The last two docket numbers are petitions for the assessment of civil penalties filed by the Secretary of Labor under section 110(a) of the Act for violations alleged in the orders.

Prior to the hearing the parties filed preliminary statements, joint stipulations and memoranda of law. The hearing was held as scheduled on May 12, 1982. Documentary exhibits and oral testimony were received from both parties. At the conclusion of the hearing both parties waived the filing of written briefs and agreed I should render a decision based upon the transcript of the hearing and documentary evidence (Tr. 203).

At the outset of the hearing the Solicitor moved to vacate Order 1121182 (LAKE 81-119-R) and to dismiss the civil penalty petition with respect to that item. The operator also moved to dismiss its notice of contest for that order. From the bench I granted the motions (Tr. 5).

During the course of the hearing the Solicitor also moved to vacate Order 1121181 (LAKE 81-118-R) and to dismiss the civil penalty petition with respect to that item. The operator also moved to dismiss its notice of contest for that order. From the bench I granted the motions (Tr. 146).

This left for decision the validity of the remaining six orders and associated penalty items.

The Mandatory Standard

Section 75.1003-2 of the mandatory standards provides in pertinent part as follows:

> 75.1003-2 Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; pre-movement requirements; certified and qualified persons.

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(a) Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present:

(1) The unit of equipment shall be examined by a certified person to ensure that coal dust, float coal dust, loose coal oil, grease, and other combustible materials have been cleaned up and have not been permitted to accumulate on such unit of equipment; and,

(2) A qualified person, as specified in 75.153 of this part, shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices provided for short circuit protection to ensure that proper short circuit protection exists.

(b) A record shall be kept of the examinations required by paragraph (a) of this section, and shall be made available, upon request, to an authorized representative of the Secretary.

(c) Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting operations.

(d) The frames of off-track mining equipment being moved or transported, in accordance with this section, shall be covered on the top and on the trolley wire side with fire-resistant material which has met the applicable requirements of Part 18 of Subchapter D of this Chapter (Bureau of Mines Schedule 2G).

....

(f) A minimum vertical clearance of 12 inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment; provided,

however, that if the height of the coal seam does not permit 12 inches of vertical clearance to be so maintained, the following additional precautions shall be taken:

> ....
>
> (3) At all times the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved and such miner shall be: (i) In direct communication with persons actually engaged in the moving or transporting operation, and (ii) capable of communicating with the responsible person on the surface required to be on duty in accordance with 75.1600-1 of this part;
>
> ....
>
> (5) No person shall be permitted to be inby the unit of equipment being moved or transported, in the ventilating current of air that is passing over such equipment, except those persons directly engaged in moving such equipment.
>
> ....

The Cited Conditions or Practices

Order No. 1121183 (LAKE 81-120-R) cites a violation of 30 CFR 75.1003-2(f)(3)(i) for the following condition:

> While the conveyor belt tailpiece unit was being transported along the No. 1 main line track entry, a miner was not stationed at the first automatic circuit breaker outby the equipment being moved or in direct communication with persons actually engaged in the transporting operation. The unit contacted the trolley wire on 2-27-81 at about 6:55 p.m. Person in charge was W. McIntire, construction foreman.

Order No. 1121185 (LAKE 81-121-R) cites a violation of 30 CFR 75.1003-2(f)(5) for the following condition:

> While the conveyor belt tailpiece unit was being transported along the No. 1 main line track entry, which came in contact with the trolley wire on 2-27-81 at about 6:55 p.m., persons were permitted to be inby the unit being transported and in the ventilating current of air that passed over the equipment. The persons were working on the 5 right and 6 right sections of 3 south along with other personnel doing "dead work." Person in charge was W. McIntire, construction foreman.

Order No. 1124038 (LAKE 81-122-R) cites a violation of 30 CFR 75.1003-2(a)(1) for the following condition:

> An inspection revealed that on February 27, 1981, a belt conveyor tailpiece unit (off-track mining equipment) was moved along the No. 1 main line haulage road in violation of the following mandatory standard: The unit of equipment (belt conveyor tailpiece) was not examined by a certified person to ensure that loose coal, coal dust, and float coal dust were cleared up and not permitted to accumulate on such equipment. Accumulations of loose coal, coal dust, and float coal dust were present on the entire surface area of the belt conveyor tailpiece unit in depths of 1/4 to 4 inches. W. McIntire, Recovery Foreman, was the person in charge.

Order No. 1124039 (LAKE 81-123-R) cites a violation of 30 CFR 75.1003-2(b) for the following condition:

> An inspection revealed that on February 27, 1981, a belt conveyor tailpiece unit (off-track mining equipment) was moved along the No. 1 main line haulage road under energized trolley wire in violation of the following mandatory standard: The absence of entries into the record book indicated that a qualified person did not examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices provided for short circuit protection to ensure that proper short circuit protection existed. W. McIntire, Recovery Foreman, was the person in charge.

Order No. 1124040 (LAKE 81-124-R) cites a violation of 30 CFR 75.1003-2(c) for the following condition:

> An inspection revealed that on February 27, 1981, a belt conveyor tailpiece unit (off-track mining equipment) was moved along the No. 1 main line haulage road under energized trolley wire without the direct supervision of a certified person. The recovery foreman in charge was not physically present during the transporting operation. W. McIntire, Recovery Foreman, was the person in charge.

Order No. 1124041 (LAKE 81-125-R) cites a violation of 30 CFR 75.1003-2(d) for the following condition:

> An inspection revealed that on February 27, 1981, a belt conveyor tailpiece unit (off-track mining equipment) was moved along the No. 1 main line haulage road under energized trolley wire in violation of the following mandatory standard: The frame of the belt conveyor tailpiece unit was not covered on the top and trolley wire side with fire-resistant material. The top surface of the unit measured 10 feet, 6 inches in length by 5 feet, 9 inches to 6 feet, 9 inches in width, and only one piece of fire-resistance belt measuring 5 feet, 2 inches in length by 3 feet in width was placed on top of the unit. W. McIntire, Recovery Foreman, was the person in charge.

Stipulations

In the first preliminary statement filed September 1, 1981, the parties agreed to the following stipulations:

1. Quarto Mining Company is the operator of the Powhatan No. 4 Mine.

2. The operator and the Powhatan No. 4 Mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.

3. The presiding administrative law judge has jurisdiction over this proceeding.

4. Each of the inspectors who issued the subject orders was a duly authorized representative of the Secretary.

5. A true and correct copy of each of the subject orders was properly served upon the operator.

6. The annual coal tonnage produced by the Powhatan No. 4 Mine is between 1.1 and 2.0 million, and the annual coal tonnage produced by the operator is over 10 million.

7. The average number of violations assessed per year during the two years prior to the issuance of the [orders] was over 50.

8. Imposition of any penalty in this proceeding will not affect the operator's ability to continue in business.

On April 8, 1982, the parties submitted an additional 19 stipulations which are as follows:

1. On Monday, February 23, 1981, miners under the supervision of Support Foreman Walter McIntire loaded four on-track supply cars in the 9 and 10 Right 1 North Section of the Powhatan No. 4 Mine of Quarto Mining Company. The four cars were loaded with belt structure, hydraulic oil, brattice cloth, empty oil cans, rags, trash and a belt tailpiece. This belt tailpiece had been modified by putting steel wings on it which increased its width. The wings were added so that when coal was dumped onto the tailpiece it would not overflow. The tailpiece was 10 feet 6 inches in length, 3 feet 1 inch in height and varied in width from 5 feet 9 inches to 6 feet 9 inches.

2. On Friday, February 27, 1981, at approximately 6:00 p.m., Mr. McIntire instructed Dwight Lancaster, general inside laborer, and George Harold, stoper operator, to transport

the four loaded cars from the 9 and 10 Right 1 North Section of the mine to the 3 South Runaround Section of the mine. Mr. Lancaster drove the locomotive pulling the cars and Mr. Harold accompanied him. The locomotive usually travels at about five miles per hour.

3. Prior to the move of the tailpiece, it was not examined by a certified person to ensure that coal dust, float coal dust, loose coal, oil, grease and other combustible materials had been cleaned up and not permitted to accumulate on it.

4. Because no examination of the tailpiece took place, no record could be kept and made available to an authorized representative of the Secretary of Labor.

5. No certified person was physically present at all times during the movement of the tailpiece to directly supervise its trip from 9 and 10 Right 1 North to the 3 South Runaround.

6. The entire top of the tailpiece was not covered by fire resistant material, although a piece of rubber matting measuring 5 feet 2 inches in length and 3 feet in width was placed on the right side or trolley wire side of the tailpiece.

7. A minimum vertical clearance of 12 inches between the wings of the tailpiece and the energized trolley wires could not be maintained during the movement of the tailpiece in part due to the physical restrictions of the coal seam.

8. The locomotive pulling the cars was using direct current electric power which was provided by a power source inby. During the move of the tailpiece, no miner was stationed to cut off the power source, no miner was outby in direct communication with Dwight Lancaster and George Harold while they were moving the tailpiece, and no miner was stationed at the first automatic circuit breaker outby the tailpiece at all times during the move.

9. The locomotive moving the four cars had traveled approximately two miles to the 95 Crosscut on the main haulage line when at approximately 6:55 p.m., the wing on the right hand side of the tailpiece came in contact with the energized trolley wire, knocking down 78 feet of trolley wire and several cable hangers. When the belt tailpiece contacted the energized trolley wire, the automatic circuit interrupting device shut off the power in the line. The power came back on a minute later, interrupted again, and remained off.

10. After the tailpiece contacted and pulled down the wire, Lancaster and Harold informed the Dispatcher and the Main Line Foreman of the incident and left their shift for the day with their section foreman Walter McIntire.

11. After Lancaster and Harold left the mine, members of the Union Safety Committee were contacted. Three members, Pete Polverini, Floyd Lucido, and Gary Anderson, arrived at the mine early in the evening and thereupon examined the tailpiece and the location of the incident.

12. Members of the Union Safety Committee contacted the MSHA Subdistrict Office later that evening and informed it about the incident. Three days later, on Monday, March 2, 1981, Federal Coal Mine Inspectors Franklin Homko and William Allen McGilton were instructed by their Supervisor Louis P. Jones to conduct an inspection of the area where the incident had occurred.

13. After examining the tailpiece and the location of the incident, the inspectors tentatively decided to issue eight orders to Quarto alleging violations of eight paragraphs of 30 C.F.R. 75.1003-2. The inspectors then held a meeting with Quarto and union officials after their inspection.

14. At this meeting Hugh Lucas, General Mine Superintendent for the No. 4 Mine, stated that Quarto's position was that a belt tailpiece was not off-track mining equipment. For this reason, Quarto believed that the requirements set forth in Section 75.1003-2, which apply only to off-track mining equipment, did not apply to the transport of a tailpiece.

15. The two inspectors took Quarto's view under advisement and contacted by telephone their subdistrict manager in St. Clairsville, Ohio, Mr. George Svilar, to reaffirm their belief that a belt tailpiece was classified as off-track mining equipment. Based on their investigation, interviews, the call to Mr. Svilar, and interpretation of the applicable regulations, the inspectors issued eight 104(d)(2) orders of withdrawal.

16. Inspector McGilton issued four orders for violations of the following:

Order No.	Paragraph of 30 C.F.R. 75.1003-2 Allegedly Violated
1124038	75.1003-2(a)(1)
1124039	75.1003-2(b)
1124040	75.1003-2(c)
1124041	75.1003-2(d)

17. Inspector Homko issued four orders for violations of the following:

Order No.	Paragraph of 30 C.F.R. 75.1003-2 Allegedly Violated
1121181	30 CFR 75.1003-2(f)(1)(ii)
1121182	30 CFR 75.1003-2(f)(2)
1121183	30 CFR 75.1003-2(f)(3)(i)
1121185	30 CFR 75.1003-2(f)(5)

18. The parties to this litigation also stipulate to Facts Not In Dispute listed at pages 2-3 of Quarto's Response to Pretrial Order filed on September 1, 1981.

19. The parties also stipulate that the transcript of MSHA's Deposition of Mr. Hugh Lucas be introduced as evidence. A copy of that transcript is filed with these Joint Stipulations.

In addition, at the hearing the parties stipulated that 24 men were inby the tailpiece when it was being moved (Tr. 6).

The parties also stipulated at the hearing that the underlying 104(d)(1) citation and order had been validly issued for the purpose of setting off the chain in which subject orders were issued (Tr. 97).

I accepted all the stipulations.

Discussion and Analysis

Existence of a Violation

The existence of a violation depends upon whether the tailpiece was off-track equipment. In accordance with the factual stipulations, the parties agree that if the tailpiece is off-track equipment, the conduct of the operator violated the Act (Tr. 6).

"Off-track" is not defined in the Act or regulations. Neither is "on-track." However, on-track has a well accepted meaning. On-track is equipment which moves on rails or tracks either under its own power like a locomotive or as in the case of a mine car under the power of another vehicle to which it is attached (Tr. 150).

I believe the determination of what is off-track must be reached by placing that term in juxtaposition to on-track. The key to both terms is mobility, how something moves. On-track refers to a certain type of movement by machines, i.e., on rails (Tr. 150). Off-track refers to another kind of movement by machinery, i.e., not on rails, as for instance on wheels like a shuttle car. As operator's safety director recognized at the hearing, off-track equipment,

like on-track, is not limited to self-propelled machines but includes equipment which is pulled or moved along by another vehicle which has power (Tr. 150-151). The operator's safety director offered a fan on skids which can be pulled about by a self-propelled machine as an example of off-track equipment without its own power of mobility (Tr. 182).

The tailpiece in question was mounted on skids (Tr. 186). It could be moved about and indeed was intended to be moved about the section without damage to the mine floor by being attached to a shuttle car which had power (Tr. 187, 189). It is therefore mobile like the fan which the operator's safety director admitted is off-track. The operator's safety director admitted that the mobility of the fan and the tailpiece were the same (Tr. 188-190). In light of the foregoing, I conclude the tailpiece is off-track equipment within the meaning of the mandatory standard.

Both parties purport to rely upon the decision in Southern Ohio Coal Company v. Secretary of Labor, 3 FMSHRC 1449 (1981, which holds that this mandatory standard only applies to "complete or reasonably complete pieces of off-track mining equipment" and does not apply to "component parts of off-track mining equipment." However, neither party seems certain what that decision means. So many things can be characterized as components of a larger entity and no one offered a basis for me to distinguish between a component and something that is reasonably complete. Therefore, I cannot apply that decision here.

Insofar as the mandatory standard covers a "unit" of off-track equipment, I conclude this tailpiece is included. It is a single or distinct part used for a specific purpose. Webster's New World Dictionary (2nd College Edition 1972).

The argument that the term off-track is too vague also must be rejected. As set forth above, the terms off-track and on-track relate to specific aspects of mine machinery and are susceptible of precise delineation. To be sure, it would have been better had the Secretary taken appropriate action to define the parameters of these terms. However, his failure to do so does not mean they are too vague to be properly defined and enforced in this proceeding. The situation here is far different from one where a wholly subjective description such as "excessive" is employed as the sole standard. Secretary of Labor v. Quarto Mining Company, 2 FMSHRC 2669 (1980), appeal dismissed, 3 FMSHRC 2051 (1981).

Accordingly, I conclude this tailpiece was off-track equipment within the purview of the mandatory standard and that therefore, the operator violated the Act.

Unwarrantable Failure

The governing definition of unwarrantable failure is still to be found in Zeigler Coal Company, 7 IBMA 280 (1977) decided under the 1969 Act which held in pertinent part as follows at 295-296:

> In light of the foregoing, we hold that an inspector should find that a violation of any mandatory standard was caused by an unwarrantable failure to comply with such standard if he determines that the operator involved has failed to abate the conditions or practices constituting such violation, conditions or practices the operator knew or should have known existed or which it failed to abate because of a lack of due diligence, or because of indifference or lack of reasonable care.

Zeigler was specifically approved during consideration of the 1977 Act. S.Rep. 95-181, 95th Cong., 1st Sess., at 31-32 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2nd Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 619-620 (1978).

In this case it is clear that the operator knew of the conditions or practices which comprised its failure to comply with the mandatory standard. The evidence makes clear that the operator's recovery foreman was in charge of moving the tailpiece and either knew or should have known of all the circumstances surrounding the move.

This is not however, the end of the matter. Under the circumstances presented here further inquiry must be made with respect to whether the operator knew or should have known that the conditions or practices constituted a violation. I recognize that after pointing out that the legislative history of the 1969 Act was not clear on the point, Zeigler concluded that unwarrantability did not depend upon knowledgeability of the operator with regard to a matter of law, i.e., whether it had committed a violation. But Zeigler was an accumulations case under 30 CFR 75.400. It did not

involve a situation like this one and I do not believe it should be dispositive here. The evidence in this case shows that tailpieces had been routinely moved from section to section in this mine without complying with 75.1003-2. Never had tailpieces been recorded in the book kept by the operator for the purpose of recording moves of off-track equipment and never had the operator been cited for failure to apply 30 CFR 75.1003-2 to tailpieces (Tr. 125-126). The MSHA inspector thought the operator's belief that the tailpiece was not off-track was reasonable, although erroneous (Tr. 135-138).

Finding unwarrantable failure and therefore imposing upon the operator the harsh sanctions flowing from mine closure and high penalty assessment is offensive to fundamental fairness where, as here, the Secretary for years has done nothing to interpret the regulatory language or to advise the operator what is expected of it. As previously stated, the Secretary's failure to act does not prevent interpretation and application of the mandatory standard in this case. However, it is quite another matter to hold the operator guilty of unwarrantable failure and subject it to attendant severe punishments in such a situation. This the Act should not be interpreted to require. I conclude therefore, the operator is not guilty of unwarrantable failure in this case.

Modification of Orders to Citations

In light of the foregoing, the subject 104(d)(2) withdrawal orders cannot stand as withdrawal orders under that section because there was no unwarrantable failure. Pursuant to section 105(d) of the Act, I hereby modify these orders to 104(a) citations. Under section 105(d) the Commission and its Judges have authority after a hearing to affirm, modify or vacate an order. I recognize that Board decisions under the 1969 Act denied administrative law judges the power to modify. See e.g., Freeman Coal Mining Corp., 2 IBMA 197, 209-210 (1973), aff'd sub nom. on other grounds, Freeman Coal Mining Co. v. IBMA, 504 F.2d 741 (7th Cir. 1974). However, another approach seems to be emerging under the 1977 Act. See the Commission's decision in Old Ben Coal Company, 2 FMSHRC 1187 (1980). Administrative law judges have modified orders under the 1977 Act. Consolidation Coal Company, 3 FMSHRC 2207 (1981); Youngstown Mines Corporation, 3 FMSHRC 1793 (1981). In this case neither party would be prejudiced by modification of the orders to citations. Both parties have had full notice and opportunity to argue every conceivable issue and they have done so.

Other considerations also dictate that these unwarrantable orders be modified to citations. The instant consolidated proceedings involve penalty assessments as well as notices of contest. The Commission has held that the allegation of a violation survives the vacation of an imminent danger or unwarrantable failure withdrawal order. According to the Commission the allegation of a violation and the assessment of a civil penalty remain in citations issued by the Secretary after the withdrawal orders are vacated. Island Creek Coal Company, 2 FMSHRC 279 (1980); Van Mulvehill Coal Company, Inc., 2 FMSHRC 283 (1980). Allowing modification of the instant orders to citations at the administrative law judge level would be the most expeditious way of handling the matter. It would avoid wasting time and money by requiring the Secretary to engage in the pro forma tasks of issuing new citations and filing new petitions for assessment of civil penalties.

In light of the foregoing, the subject withdrawal orders are modified to 104(a) citations.

Issuance of Multiple Orders

Section 110(a) of the Act provides "Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense." The operator argues that there was only one occurrence--moving the tailpiece, and that therefore only one order should have been issued. The operator also relies upon an MSHA policy memorandum dated October 3, 1979, which provides that:

> [W]here there are multiple violations of the same standard which are observed in the course of an inspection and which are all related to the same piece of equipment or to the same area of the mine, such multiple violations should be treated as one violation and one citation should be issued.

I cannot accept the operator's position. In allowing separate citations, section 110(a) refers to the occurrence of a "violation" not the occurrence of an event which may be composed of multiple incidents or happenings, each with its own identity and each of which may independently violate the Act for a different reason. In this case moving the tailpiece involved several incidents such as miners inby the equipment, failure to examine the equipment, lack of supervision by a certified person, absence of fire resistant

material, etc., each of which violated a different part of the mandatory standard. Section 110(a) allows each of these to be cited as a separate violation. The MSHA memorandum does not support the operator's position. The examples given in the memorandum, e.g., loose ground in four places on a haulageway, make clear that the memorandum is directed at the same thing happening more than once in the same area or with respect to the same piece of equipment. Here different things happened and each of them violated a different sub-section of the mandatory standard for a different reason.

Accordingly, multiple violations properly were, found and separate orders, now modified to citations, were properly issued for each of them. As set forth infra, the fact that the violations arose out of the same event may be taken into account in determining the appropriate amount of civil penalties to be assessed.

The Amount of Civil Penalties

Section 110(i) of the Act sets forth the factors which must be considered in assessing civil penalties.

In accordance with the stipulations, I find the operator is large in size, imposition of penalties will not affect its ability to continue in business, and its history of prior violations is rather significant. As agreed at the hearing, I further find abatement was within a reasonable time and in good faith (Tr. 29-30).

As shown by the testimony, the violations posed hazards such as smoke inhalation. I conclude they were moderately serious.

As set forth above, I do not believe the operator was guilty of unwarrantable failure. However, since the recovery foreman was on the scene and in charge of the move, the operator must be held to have been negligent. In addition, I believe the fact that all violations were committed in moving the tailpiece should be borne in mind in assessing the degree of negligence and gravity. This situation is somewhat different than where the operator commits several wholly unrelated serious violations and is negligent in situations which have nothing to do with each other.

In light of the foregoing, a penalty of $100 is assessed for each of the violations cited in the six orders now modified to citations.

Order

It is ORDERED that the Solicitor's motions to vacate Orders 1121181 and 1121182 be GRANTED and that LAKE 81-118-R and LAKE 81-119-R be DISMISSED.

It is ORDERED that 104(d)(2) Orders 1121183, 1121185, 1124038, 1124039, 1124040 and 1124041 be Modified to 104(a) citations.

It is ORDERED that within 30 days of the date of this decision the operator pay penalties of $600.

Paul Merlin
Chief Administrative Law Judge