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SOL (MSHA) V. KAISER STEEL
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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. WEST 80-79 A.C. No. 42-00094-03008 I Docket No. WEST 80-128
v.	A.C. No. 42-00093-03018 Docket No. WEST 80-152
KAISER STEEL CORPORATION, RESPONDENT	A.C. No. 42-00092-03013 Sunnyside Nos. 2, 1, 3 Mines

DECISION

Appearances: Phyllis K. Caldwell, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner David B. Reeves, Esq., Kaiser Steel Corporation, Fontana, California, for Respondent

Before: Judge Vail

STATEMENT OF THE CASE

The above three consolidated cases, involve petitions proposing assessment of civil penalties pursuant to provisions of the Federal Mine and Safety Act of 1977 (hereinafter the "Act"), 30 U.S.C. 801 et seq. A hearing on the merits was held in Price, Utah, following which the parties filed post-hearing briefs. Based upon the entire record and considering all of the arguments of the parties, I make the following decision. To the extent that the contentions of the parties are not incorporated in this decision, they are rejected.

STIPULATION

The parties stipulated as follows:

1. Kaiser Steel Corporation (hereinafter "Kaiser") and its Sunnyside Mines Nos. 1, 2, and 3 are subject to the jurisdiction and coverage of the Act.

2. Kaiser is a medium sized operator employing 230 miners and producing approximately 3,000 tons of ore daily.

3. It is further agreed by the parties that the history of prior violations under the Act is low and that the assessment of reasonable penalties in these cases, would not impair Kaiser's ability to continue in business.

4. It was also stipulated that good faith was shown on the part of Kaiser in the abatement of citation No. 789800 in Docket No. WEST 80-152 and citation Nos. 789765 and 789767 in Docket No. WEST 80-128.

Docket No. WEST 80-79

At the commencement of the hearing, the Secretary moved to withdraw his petition for the assessment of penalties for two citations in Docket No. WEST 80-79. Counsel for the Secretary stated that the basis for this motion was an inability on the Secretary's part to prove the alleged violations. (Transcript at 5).

There being no objection by Kaiser and pursuant to 29 C.F.R. 2700.11,(FOOTNOTE 1), the Secretary's motion was granted and citatio Nos. 789229 and 789230 are vacated and Docket No. WEST 80-79 is dismissed.

Docket No. WEST 80-152

Citation No. 789800

On August 14, 1979, MSHA inspector Gerald Mechtly conducted an inspection of Kaiser's underground coal mine identified as the Sunnyside Mine No. 3. Ralph A. Sanich, Kaiser's safety specialist, accompanied Mechtly.

As a result of this inspection, Mechtly issued a 104(d)(1) (FOOTNOTE 2) citation No. 789800 alleging a violation of safety standard 30 C.F.R. 75.305. The condition or practice alleged to have occurred is described in the citation as follows: "There was no date, time, and initial, in the 16R return belt entry to indicate a Mine Examiner had performed the weekly examination since 7-30-79. On the surface the pre-shift mine examiner's book has records dated 8-6-79 and 8-13-79 stating "16R belt return O.K."

The standard alleged to have been violated reads in pertinent part as follows:

> 75.305 Weekly examinations for hazardous conditions. [Statutory Provisions] In addition to the preshift and daily examinations required by this Subpart D, examinations for hazardous conditions, including tests for methane, and for compliance with the mandatory health or safety standards, shall be made at least once each week by a certified person designated by the operator in the return of each split of air where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return air course in its entirety, idle workings, and, insofar as safety considerations permit, abandoned areas. Such weekly examinations need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date and time at the places examined .... A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

Kaiser contends that weekly examinations of the cited area of the mine had been made as evidenced by the notations on the surface in the pre-shift mine examiner's book. Also, Tom Dickerson, Kaiser's mine examiner, testified that he had made the required examinations and entries in the surface book as well as underground at certain locations in the entry. Kaiser further contends that exhibit R-2 support the testimony of Dickerson (Tr. 93, 94 and Exh. R-2).

The Secretary argues that there were at least four inspection cards in the left half of the 16 right entry of Kaiser's mine which bore no dates or initials that would coincide with the pre-shift mine examiner's book on the surface. He further contends that section 75.305 requires an inspection be made once a week of one entry of each intake and return air course in its entirety. Further, that the violation cited here is for a failure to inspect rather than a record keeping violation, thus the 104(d)(1) designation (Tr. 92, 93).

The facts surrounding the inspection which gave rise to the issuance of citation No. 789800 are not in dispute. The 16 right belt entry is described as a two entry system approximately 6800 feet long. The lower level is designated a travel and intake entry and the upper level as a belt and return entry. The two entries are separated by pillar blocks with stoppings constructed between the pillars. Doors are located in the stoppings at approximately every 500 feet with six or seven doors between cross-cuts 29 and 62, the area cited here.

Mechtly testified that on August 14, 1979, he and Sanich traveled the intake entry to an isolation area located between cross-cut 61 and 62. After inspecting that area, they started back in the return belt entry. It was at this point he observed cards indicating when the area had last been inspected on a weekly basis. The first card without the proper date and initials was observed near the isolation door between cross-cuts 61 and 62. It showed July 30, 1979 as the last date a weekly inspection was conducted. Three other cards with the same date and initials were observed in the return belt entry at cross-cuts 53, 58, and 46. Based on this, Mechtly informed Sanich of his concern that there was a violation of section 75.305 and that he wanted to go to the surface to look at the mine examiner's book. They then proceeded to cross-cut 29 and out the lower intake entry (Tr. 45-49, Exhibits P1 and P2).

The mine examiner's book on the surface indicated that inspections were made in the 16 right entry on August 6 and 13, 1979 (Tr. 50).

Sanich testified that he observed some cards shown him by Mechtly in the return belt entry on August 14, 1979, with dates and initials to indicate a weekly inspection was not made within the prior two weeks. He also stated that when Kaiser was given citation No. 789800, he did not realize it was a (104(d)(1) order. On December 4, 1979, approximately three months later, Kaiser was sent a notice by the MSHA assessment office indicating that the citation was a 104(d)(1) order. Upon receipt of that information, Sanich went underground to the 16 right entry and retrieved some miner's inspection cards from cross-cuts 2, 19, 29, and raise belt cross-cut 1 and 7 indicating that the area had been inspected on August 13, 1979 (Tr. 33, 34 and Exhibits R1 and R2, A,B,C,D). Based upon this evidence, Kaiser argues that it has proven that a miner's examination was conducted of the 16 right entry. Also, that standard 75.305 does not require that every card in the return must be signed.

I reject Kaiser's argument in this case. The standard requires a weekly examination by a certified person in at least one entry of each intake and return air course in its entirety. In this case, the operator had placed cards for the miner examiner to sign in various locations in the entry. The four cards observed by Mechtly in the return entry, without the proper dates and initials to show that a weekly examination had been made, covered a distance of approximately 3000 feet or half of that particular entry. Prior dates and initials had been placed on these cards as late as July 30, 1979. I must assume that the operator placed these cards at those particular places expecting them to be used by the person certified to do the weekly mine examination.

Kaiser's four cards showing dates and initials for August 6 and 13, 1979, submitted as exhibit R-2 (A,B,C and D), were not persuasive in showing that the proper weekly inspections were made of the entire area. Kaiser admitted that these cards were retrieved approximately three months after the citation was issued. Card R-2B and R-2D were located at the far ends of the entry. When asked about this, Mechtly testified that the fact that these cards showed dates that conformed with weekly inspections "indicated that the mine examiner had access to both ends of that entry to mark those cards" (Tr. 64). As to the card marked R-2C, this was supposedly found by Sanich near cross-cut 53 when he went back in December 1979. However, on cross-examination, Sanich testified that in August 14, 1979, the cards seen between cross-cuts 63 and 29 in the return entry did not have correct dates on them (Tr. 35).

In light of the foregoing, I do not find Kaiser's arguments to be credible. It must be assumed that the portion of the return entry between cross-cut 29 and 63 was not examined by the mine examiner. Even assuming that the standard 75.305 does not require a card every few feet, as Kaiser argues, both Mechtly and Kaiser's own safety specialist testified that they did not see a card with proper

dates and initials entered thereon for a distance of over 3000 feet in the return entry of this part of the mine on the day of the inspection. Therefore, it must be assumed that such a card was not there. Exhibit R-2C found at cross-cut 54 three months later shows the date of August 6, 1979 and then August 15, 1979, which was a day after the inspection so this does not support Kaiser's contention that a card existed in the cited area showing that the required weekly inspection had occurred.

I have considered the testimony of Tom Dickerson, Kaiser's certified mine examiner, wherein he testified that there were approximately ten cards in the 16 right belt entry and that he does not mark each card as he does his inspection. Also, that he made a weekly inspection of 16 right belt entry on August 6 and 13, 1979 (Tr. 80-81). However, the credible evidence does not support this. Out of ten cards, in this entry, only one, Exhibit R-2C was presented as evidence to show the examination was made and this showed a date of August 6, 1979 which was more than a week before the inspection and a date of August 15, 1979, which was a day after. Also, Dickerson testified that he was advised by a Mr. Oviatt, Kaiser's mine foreman on August 14, 1979 (the day citation No. 789800 was issued) to stay out of the area (Tr. 78). However, Exhibit R-2C shows that Dickerson was back in the area and dated the card and initialed it with his initials "TD" on August 15, 1979. Dickerson also testified that he didn't go into the area on August 14 or 15, 1979 (Tr. 79). No explanation was given at the hearing for this discrepancy but it goes towards the credibility of the witness.

I find that a violation of the standard occurred and that such a violation constitutes an unwarrantable failure on the part of Kaiser. Kaiser knew or should have known that the cards were not being marked in an area of its mine which would alert it to the probability that weekly inspections were not being properly conducted. Other members of mine management would have occasion to be in this area and should have observed this. Zeigler Coal Company, 7 IBMA 280 (1977).

I further find that such a violation is of a significant and substantial nature as those terms are defined in Cement Division, National Gypsum Company, 3 FMSHRC 822 (April 1981). That is, a finding of whether a violation is "significant and substantial" depends on whether there existed a reasonable likelihood that the hazard contributed to or would have resulted in an injury of a reasonable serious nature. The purpose of the weekly inspection provided for in standard 75.305 is to detect hazardous conditions such as deteriorating roof conditions, air currents being blocked off and reversed, and methane accumulations. Any of these conditions could cause serious injury or death to miners in the area, if undetected.

I find that Kaiser did show good faith in quickly abating this violation. I find that a penalty of $210.00 is appropriate in this case.

Docket No. WEST 80-128

The facts in this case are not in dispute. On August 1, 1979, MSHA inspector Theodore L. Caughman issued six citations involving three pieces of mine equipment alleging violations of the Federal Coal Mine and Safety Act of 1977, 30 U.S.C. 801 et seq. Caughman wrote the citations when he observed two shuttle cars and a loader cleaning up coal in the 15 right belt entry of Kaiser's Sunnyside No. 1 Mine. Each piece of equipment was cited under 30 C.F.R. 75.523-1 (failure to have a panic bar) and 30 C.F.R. 75.1710-1 (failure to have a cab or canopy). Kaiser was given until the following day (August 2, 1979) to abate these violations.

On August 2, 1979, Caughman returned to the same area and found that the three pieces of equipment had been moved to a location near the railroad track leading out of the mine. The trailing cables were disconnected and stored in the cars. Caughman issued a modification for each citation indicating that the equipment had been removed from service and that additional time was needed to remove it from the mine. The abatement period was extended to August 7, 1979 (Exh. R-1).

On August 7, 1979, the inspector returned to the mine and found the loader parked outside the mine on a rail car and so terminated the two citations issued on that unit. On entering the mine, he discovered that the two shuttle cars were still underground at the location where he had earlier seen them. Caughman issued a 104(b)(FOOTNOTE 3) order against each of the four citations issued on the two shuttle cars and pinned a red tag on the equipment for failure to abate the citations within the time designated.

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Issues:

The issues in this case are:

1. Whether the three pieces of mine equipment cited here are electric face equipment within the meaning of 30 C.F.R. 75.523.1 and 30 C.F.R. 1710-1.

2. Whether the 104(a) citations on the two shuttle cars were abated by removing the cables and storing them in the machines although they remained underground in the mine.

3. If violations are found, what is the appropriate penalty to be assessed.

Discussion:

Kaiser concedes the fact that neither the loader or two shuttle cars were equipped with panic bars, cabs or canopies. However, it contends that the citations should be set aside because these machines were not "electric face equipment" within the meaning of the two cited safety standards and, therefore said standards are not applicable (Kaiser's Brief at 2).

The facts show that on the day the three pieces of equipment were cited by inspector Caughman, they were being used to clean up coal and rock from the floor of an arched entry. The debris had fallen from between the arches and the area was being prepared for a belt entry. This was located several thousand feet from the nearest working face.

Rex W. Jewkes, Kaiser's safety engineer, testified that they no longer used loaders, like the one cited here, directly behind the continuous miner in extracting coal. Instead, the continuous miner loads coal directly into the shuttle cars at the working face. Also, that all of the shuttle cars used at the working face are equipped with either cabs, canopies, or panic bars (Transcript 15, 16 and 17).

The specific issue to be decided here, then, is whether the loader and two shuttle cars being used in this location are required to comply with either standards 75.523-1 or 75.1701-1 by being equipped with either panic bars, cabs or canopies. I am persuaded that they are.

Safety standard 75.523-1(a) requires that all self-propelled electric face equipment which is used in the active workings of each underground coal mine shall be provided with a device that will quickly deenergize the tramming motors of the equipment in the event of an emergency. Section 75.523-1(b) provides that self-propelled electric face equipment that is equipped with a substantially constructed cab which meets the requirements of this part shall not be required to be proveded with a device that will quickly de

energize the tramming motors of the equipment in the event of an emergency. Section 75.523-1(b) provides that self-propelled electric face equipment that is equipped with a substantially constructed cab which meets the requirements of this part shall not be required to be provided with a device that will quickly deenergize the tramming motors of the equipment in the event of an emergency.

Standard 75.1710-1 requires installation of protective cabs or canopies on all self propelled electric face equipment on a staggered time schedule coordinated with descending mining heights. It states in pertinent part:

> (a) [A]ll self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. (emphasis added).

Kaiser argues that the equipment cited here is not electric face equipment as specified in the above standard for the reasons that the loader and two shuttle cars were not taken or used inby the last open crosscut of an entry or a room of the mine. In support of this argument, Kaiser suggests that "electric face equipment" is defined in 30 C.F.R. 75.2(i) as: ""Permissible' as applied to electric face equipment means all electrically operated equipment taken into or used inby the last open crosscut of an entry or a room of any coal mine ...." Further, it argues that applicable legislative history dispels any doubt that the term "electric face equipment" was only descriptive of equipment used in the specified geographic area (Kaiser's Br. 4, 5).

I am not persuaded by Kaiser's argument. Both regulations do refer to self propelled electric face equipment and, also, to shuttle cars specifically. However, the area of use is not stated to be or restricted only to the face of the mine. Instead, the area of use is described as the "active workings" of the mine. In 30 C.F.R. 75.2, the drafters of the regulations saw fit to define what they meant by the terms used. 75.2(g)(4) states as follows: "active workings means anyplace in a coal mine where miners are normally required to work or travel." It should be noted that under 75.2(g)(i) it defines what a working face means and states as follows: "[M]eans any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle." I feel certain that if the

intent of the Secretary was to restrict the requirements of panic bars or cabs or canopies to the face area of the mine, he would have stated "working face" rather than "active workings."

It must also be kept in mind that the purpose of the Act and regulations promulgated thereunder is to protect the safety and health of the miners. A similar argument as presented by Kaiser and involving definitions of this Act, but a different regulation, was considered by the Sixth Circuit Court of Appeals in the case of Shamrock Coal Company v. Secretary of Labor, (Reference 6th Cir. Number 79-3199)(February 9, 1981). The case involved the issue of where 30 C.F.R. 75.202 regarding roof support required roof support in tunnels leading to the face, or just the face, under the phrase "working places." The Court stated in pertinent part as follows:

> The mine operator argues that the emphasized portion of this section is only applicable in "working places" within the mine. The term "working place" is defined to be the area of the mine inby the last open crosscut, 30 C.F.R. 75.2(g)(2). Common sense, and the congressionally expressed purposes of the Act. 30 U.S.C. 801(a), however, compel us to reject an interpretation of the regulation which would protect workers at the face of the mine, but expose miners to the danger of unsupported roof in the tunnels they traverse on the way to and from the working face.

I believe this logic is applicable in the present case.

Kaiser further argues that by description, the two shuttle cars and the loader are "electric face equipment" and must only comply with the requirements of the cited regulations if they were being used or intended to be used at the face. This problem was addressed by the Commission in Secretary of Labor v. Solar Fuel Company, 3 FMSHRC 1384 (1981), wherein they held that "equipment which is taken or used inby the last open crosscut" means equipment habitually used or intended for use regardless of whether it is located inby or outby when inspected. The Commission emphasized in Solar Fuel Company that it is not where the equipment is located at the time of the inspection that is important, but whether it is equipment which can be taken or used "inby." Accordingly, each of these three pieces of equipment involved in the present case could have been utilized at the face if the operator so desired.

Kaiser maintains it no longer used loaders at the face or was it intending to use the two shuttle cars there. However, nothing would prevent them from so utilizing the equipment at the face should the requirement of its use arise. I therefore feel that it

is not sufficient that the operator maintains it was not their intention to use the equipment as "electric face equipment."

Kaiser further contends that according to the legislative history of the Act, the Secretary exceeded the scope of his authority in promulgating regulations providing for panic bars or cabs or canopies on electric face equipment used in "active workings" of the mine. A review of the Act shows that section 318(g)(4) defines "active workings" the same as under the regulations recited earlier herein. I do not find that the applicable legislative history restricts the authority of the Secretary to provide regulations governing the use of self powered electric face equipment outside the area of the face. It is obvious that by adopting certain provisions of the Act, strict compliance was intended for any electric powered equipment taken inby the last open crosscut of the mine. However, I do not find that the standards 75.523-1 and 75.1710-1 are in conflict here.

In light of the foregoing, I find that Kaiser was in violation of the six citations issued against the three pieces of equipment cited here.

The other issue presented in this case is whether the four citations against the two shuttle cars were abated, even though they remained underground, by removing the power cable from the power source and storing the cable in the boxes on the machines.

The Secretary argues that the shuttle cars were still available for use and that it would only take minutes to plug the trailing cables into the power source located approximately 150 feet away and the machines would be back in service (Secretary's Brief at 4).

Kaiser argues that the two machines had not been used since the withdrawal from service and that there is no requirement that defective equipment be removed and taken to the surface to constitute abatement. Kaiser also contends that the Secretary's reliance on the Commission's decision in Ideal Basic Industries, 2 FMSHRC 1242 (April 1981), is misplaced (Kaiser's Br. at 14).

I disagree with this argument as I find the Commission's ruling in Ideal Basic Industries plainly supports the Secretary's argument here. In Ideal Basic, the equipment cited was a track mobile with one of two hydraulic couplers defective. The operator argued that the track mobile was not used in its defective condition after it was cited. The Secretary argued that the machine had been used, using the non-defective coupler, and that could affect safety. The Commission agreed and stated further as follows:

> Even if, however, the evidence were insufficient to establish that the track mobile was operated while the coupler was broken, we find that the mobile was nonetheless "used" within the meaning of the standard. If equipment with defects affecting safety is located in a normal work area, fully capable of being operated, that constitutes "use". Here, at the time of the inspection, the mobile was parked in a usual location, right next to the area where railroad cars--which the mobile is used to move--are loaded. It was neither rendered inoperable nor in the repair shop. To preclude citation because of "non-use" when equipment in such condition is parked in a primary working area could allow operators easily to use unsafe equipment yet escape citation merely by shutting it down when an inspector arrives.

This same conclusion can be applied in the case of the two shuttle cars. They were in the area and available for use by taking out the power cables and plugging them into the transfer. It could take only an estimated five minutes of a miners time to put them back in service.

The Commission in Ideal Basic stated that its decision was consistent with that in Eastern Associated Coal, 1 FMSHRC 1473 (October 1979), which involved placing a danger tag on a defective jitney that remained operable in the working area. The Commission stated in that case:

> We hold that tagging the jitney was not sufficient to withdraw the jitney from service because the danger tag did not prevent the use of the defective piece of equipment. The jitney was still operable and the danger tag could have been ignored. 1 FMSHRC at 1474. The reasoning of Eastern Associated is applicable here as well, where there was not even a danger tag placed on the defective coupler.

In light of the foregoing, I find that the same reasoning must be applied in the present case. There was no danger tag on either of the shuttle cars and either one could have been returned to service, either unintentionally by a miner unaware of the citations, or intentionally if such were the need or desire of the operator. Therefore, I find that the citation was not abated as required under 104(b).

Penalty

The six criteria for assessing a penalty are set out in 30 U.S.C. 820(i). The parties have previously stipulated as stated before regarding the jurisdiction, size of the operator, and that assessment of reasonable penalties in this case would not affect their ability to continue in business.

From the evidence I conclude that Kaiser was negligent in allowing the two shuttle cars and the loader to be operated in the active workings of the mine without either panic bars or cabs or canopies installed on them. I find the gravity to be serious for the operator of either of these machines could have been seriously injured or killed by being squeezed between the rib of the entry and the operator would be unable to quickly deenergize the tramming motors if an emergency arose. Also, there was an exposure of injury or death from the lack of either a cab or canopy on any of the equipment.

I find that by removing the loading machine to the surface, Kaiser evidenced good faith in abatement of the two citations against it. However, in failing to remove the two shuttle cars from the mine within the time specified initially and subsequently extended for termination of the four citations issued against them, I find that Kaiser did not evidence good faith and increased penalties to be assessed herein is warranted.

As to the six citations involved herein, I find the following penalties to be appropriate:

Citation No.	30 C.F.R. Standard	Description	Penalty
789765	75.523-1	(loading machine, no panic bars)	$ 50.00
789767	75.1710-1	(loading machine, no cab or canopy)	50.00
789768	75.1710-1	(shuttle car ET 7314 no cab or canopy)	100.00
789778	104(b)	(failure to abate)	
789769	75.523-1	(shuttle car ET 7314 no panic bars)	100.00
789777	104(b)	(failure to abate)	
789770	75.523-1	(shuttle car ET 7065 no panic bars)	100.00
789775	104(b)	(failure to abate)	
789771	75.1710-1	(shuttle car ET 7065 no cab or canopy)	100.00
789776	104(b)	(failure to abate)	
		Total	$500.00

I have elected to reduce the amount of the Secretary's proposed penalties in the above six citations for the reason that I do not find that Kaiser's negligence in this case was gross.

Also, there were two citations against each piece of equipment for separate violations although compliance with either standard would have satisfied the Act's requirements.

As to the abatement of the four citations on the two shuttle cars, I find that the machines were removed to the area where they would be taken to the surface and no evidence that this was not Kaiser's intention. Also, there is no evidence that the shuttle cars were used or there was an intention to use them after the citations were issued. Therefore, I do not find any indication of violations of the initial citations.

ORDER

Accordingly, in Docket No. WEST 80-79, citation Nos. 789229 and 789230 are VACATED and the case is DISMISSED. In Docket No. WEST 80-152, citation No. 789800 is AFFIRMED, and Kaiser is ORDERED to pay a civil penalty of $210.00. In Docket No. WEST 80-128, the six 104(a) citations and the four 104(b) orders are AFFIRMED and Kaiser is ORDERED to pay civil penalties totaling $500.00 therefore. Kaiser is ORDERED to pay the above civil penalties totaling $710.00 within 40 days of this decision.

Virgil E. Vail
Administrative Law Judge

~FOOTNOTE 1

2700.11 Withdrawal of Pleading:
A party may withdraw a pleading at any stage of a proceeding with the approval of the Commission or the Judge.

~FOOTNOTE 2

Section 104(d)(1) of the Act provides in pertinent part as follows:
(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this Act ....

~FOOTNOTE 3

Section 104(b) of the Act reads in pertinent part:
If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) that a violation described in a citation issued pursuant to subsection (a) has not been totally abated within the period of

time as originally fixed therein or as subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.