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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	CIVIL PENALTY PROCEEDING Docket No. CENT 87-77-M A.C. No. 34-00026-05513
v.	
BLUE CIRCLE ATLANTIC, INC., RESPONDENT	Tulsa Cement Plant

DECISION

Appearances: Michael Olvera, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, for the Petitioner;
Robert McCormac, Industrial Relations Manager, Blue Circle Inc., Tulsa, Oklahoma, for the Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments in the amount of $377 for five alleged violations of certain mandatory safety standards found in Part 56, Title 30, Code of Federal Regulations. The respondent filed an answer denying the violations, and a hearing was held in Tulsa, Oklahoma. The parties were afforded an opportunity to file posthearing briefs, and the respondent's arguments presented therein have been considered by me in the adjudication of this matter. The petitioner opted not to file any posthearing arguments.

Issues

The issues presented in this proceeding are whether the respondent violated the cited mandatory safety standards, and if so, the appropriate civil penalty to be assessed for those

violations based on the criteria found in section 110(i) of the Act. Also at issue are the inspector's "significant and substantial" (S & S) findings, and the respondent's contention that the petitioner failed to follow its civil penalty assessment regulations by not affording the respondent an opportunity for a conference with respect to one of the modified citations.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub.L. 95Ä164, 30 U.S.C. 801 et seq.

2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).

3. Commission Rules, 20 C.F.R. 2700.1 et seq.

Stipulations

The parties stipulated to the following (Tr. 3):

1. The respondent's history of violations during the 24Ämonth period prior to the issuance of the citations in issue in this case consists of ten (10) violations issued during the course of 40 inspection days.

2. The respondent's Tulsa Cement Plant had an annual production of 235,139 tons, and the annual production rate of its parent corporation, Blue Circle, Incorporated was 1,577,966 tons.

3. The payment of civil penalties for the violations in question in this case will not adversely affect the respondent's ability to continue in business.

4. The respondent's representative stated that the respondent mines limestone, and that the product produced is Portland cement.

Discussion

The contested citations were issued by MSHA Inspector James M. Smiser during the course of inspections he conducted at the mine on March 24 and 25, 1987, and they are as follows:

Section 104(a) "S & S" Citation No. 2870013, March 24, 1987, cites a violation of 30 C.F.R. 56.20003(a), and the condition or practice states as follows:

> The passageway on the #3 conveyor, in crushing division, was not maintained in a

> clean and orderly condition. An excessive amount of rock and materials were allowed to accumulate on passageway, making movement hazardous for employee.

Section 104(a) "S & S" Citation No. 2870015, March 24, 1987, cites a violation of 30 C.F.R. 56.4102, and the condition or practice states as follows:

> The combustible liquid spillage and leakage, at the AllisÄChalmers primary crusher hydraulic control center, was not removed in a timely manner, or controlled to prevent a fire hazard. The oil spill/leak was large enough to cover floor area used as a passageway.

The citation was subsequently modified on May 11, 1987, to change the cited standard from section 56.4102 to section 56.20003, and the condition or practice was modified to read as follows:

> The floor at lower level of the primary crusher work area was not maintained in a clean and dry condition. The hydralic (sic) oil spillage and leakage at the hydralic (sic) control center covered the floor area used as a passageway.

Section 104(a) "S & S" Citation No. 2870016, March 24, 1987, cites a violation of 30 C.F.R. 56.20003(a), and the condition or practice states as follows:

> The passageway on west end of primary crusher discharge leaf conveyor was not maintained in a clean and orderly condition. The passageway was cluttered with steel plates, wood, and other materials.

Section 104(a) "S & S" Citation No. 2870742, March 24, 1987, cites a violation of 30 C.F.R. 56.6112, and the condition or practice is described as follows:

> The burning rate of the safety fuse in use at quarry operation was not measured, posted in conspicuous location, and brought to the attention of all persons concerned with blasting. The last posted burning rate was 1985.

Section 104(a) "S & S" Citation No. 2870741, March 25, 1987, cites a violation of 30 C.F.R. 56.11012, and the condition or practice is stated as follows:

> The opening at far east end of travelway, on north side of conveyor, between plant and clinker storage area is not provided with railings, barriers, or covers, to provide employee protection from a 15 to 20 feet fall, to bottom of storage bin.

MSHA's Testimony and Evidence

MSHA Inspector James S. Smiser, testified as to his background and experience, and he confirmed that he issued the citations in question during the course of a scheduled regular inspection conducted at the mine. He described the mine as an open pit limestone mine with an associated cement mill, and he confirmed that the mine employed approximately 80 employees working three shifts (Tr. 6Ä9).

Citation No. 2870013 - 30 C.F.R. 56.20003(a)

Inspector Smiser stated that he issued the citation for an accumulation of materials which he found along an inclined conveyor belt that is used in conjunction with the crushing of materials. He believed that the material had fallen off the belt onto the walkway or passageway along the north side of the belt which proceeded from ground level up into the mill building. The crushed limestone material was of various sizes, from three-quarters of an inch to an inch and a half, and in some areas it completely covered the walkway surface, running over the kick-plate located along the side of the floor of the walkway. He confirmed that section 56.20003(a) requires that passageways or walkways be maintained in a safe condition free of accumulated materials, and in his opinion, the cited accumulations presented a tripping or falling hazard. The purpose of the three-inch kickplate was to prevent the materials from falling off the walkway to the ground level below and to prevent persons using the walkway from falling off the walkway. He confirmed that a standard handrail, with an upper and mid rail, was installed along the walkway (Tr. 10Ä11).

Mr. Smiser stated that his gravity finding of "highly likely" was based on his opinion that the presence of accumulated materials above the kickplate level presented a "very great chance" of someone falling. Although someone falling would not fall to the ground level below, they would probably

catch themselves within the walkway area, but could possibly sustain a back injury or a broken arm, leg, or ankle. He determined that one individual such as a serviceman conducting an equipment inspection regularly travelled the walkway and would be exposed to the hazard. Such a person would normally be carrying a grease gun or other service equipment in one hand, leaving only one hand free for balance in the event he fell. This increased the chances of an injury.

Mr. Smiser believed that it was reasonably likely that the hazard created by the accumulations would result in an injury of a reasonably serious nature (Tr. 11Ä13). Mr. Smiser confirmed that he made a finding of "moderate negligence" based on information supplied to him during his close-out conference which indicated that the accumulations had existed prior to his inspection and would have been there more than one time. He was told that the accumulations resulted from an engineering problem associated with the conveyor and were often present. Abatement was achieved by the removal of the materials from the walkway (Tr. 13).

On cross-examination, Mr. Smiser stated that it was unlikely that anyone could slip completely under the handrail, and he confirmed that he was familiar with the respondent's belt maintenance procedures (Tr. 28).

Citation No. 2870015 - 30 C.F.R. 56.4102

Mr. Smiser stated that he issued the citation after finding spillage of hydraulic fluid caused by a leak of a crusher hydraulic system located in the crusher plant. The spillage was located on the concrete floor area which was surrounded by handrails. The leak had been present for some time, and in an effort to control it, clay absorbent material was spread over the spillage in an effort to dry it up. At a later date, wooden planks were put down over the spillage for access around the crusher to the hydraulic control unit. Mr. Smiser stated that section 56.4102 requires that the floor "be kept clean and orderly" (Tr. 15).

Mr. Smiser believed that the cited condition presented a probable slip and fall hazard to a serviceman who periodically was in the area to check the hydraulic oil in the crusher unit, and that he would likely suffer back injuries if he were to slip and fall on the walkway surface. Mr. Smiser estimated that the variance between the flat walking surface and the planks ranged between zero and 3 inches. He believed the condition resulted from "high negligence" because it was obvious that the spillage and leakage had existed for some time since

the clay absorbent material and wooden planks had been used in an attempt to control the spillage. The violation was abated by the removal of the spillage and controlling the leak (Tr. 16Ä17).

On cross-examination, Mr. Smiser confirmed that his citation was subsequently modified on May 11, 1987, to delete the reference to section 56.4102, and to replace it with section 56.20003, and that his original negligence finding was modified from "moderate" to "high." Mr. Smiser confirmed that the modifications were made after a post-citation conference with his supervisor Russell Smith in which he and Mr. McCormac were involved. Mr. Smiser confirmed that he believed the original citation was properly issued but that Mr. Smith believed that the cited hydraulic oil was not as combustible as he (Smiser) had originally believed, and that the decision to modify the citation was made by Mr. Smith (Tr. 30). Mr. Smiser stated that the modified citation was mailed to the respondent and he had no knowledge as to whether or not another conference was held to discuss a clean-up problem rather than a combustibility problem (Tr. 31). Mr. Smiser conceded that the use of absorbent materials and the installation of wooden planks on the floor in an area of spillage is normally done to alleviate or avoid problems and as an effort to provide safe access. He was sure that a serviceman had to go to the area to check the hydraulic oil, but could not state how often this would occur (Tr. 32Ä33).

Citation No. 2870016 - 30 C.F.R. 56.20003(a)

Inspector Smiser stated that he issued the citation after finding steel plates, wood, and other materials such as cans of lubricant on the walkway which had been constructed around a leaf conveyor. The conveyor itself was well guarded and presented no problem. The steel plates consisted of removable inspection and service covers which had apparently been removed at some previous time and left on the walkway. The plates were located at the top of a staircase leading to the walkway. Once reaching the top of the staircase, one had to step on top of the plates which were stacked unevenly on top of each other in a "tipping" manner. Since there was no solid walkway surface, he believed that it was reasonably likely that an injury would occur in the event of a slip or fall (Tr. 18).

Mr. Smiser stated that the walkway in question was in a very isolated area of the plant which was not traveled by a large number of people, but that a serviceman in the area servicing the conveyor and associated equipment once a shift

would be exposed to the hazard. Mr. Smiser believed that if a slip or fall injury occurred, there was a reasonable likelihood that it would be of a reasonably serious nature. He made a determination of "moderate negligence" on the basis of the amount of stone dust on top of the plates and other materials, indicating that they had been present for some time. The violation was abated by the removal of the materials (Tr. 18Ä19).

On cross-examination, Mr. Smiser stated that the passageway in question did not lead to any other location, and in order to get back from where one started, one would have to turn around and go back in the opposite direction. Under the circumstances, it would be unlikely that employees on any casual travel through the plant would use the cited passageway, and any hazard exposure would be extremely limited on the platform. Mr. Smiser confirmed that it was possible that a failure of a dust collector earlier on the day of his inspection could have caused the presence of the dust which he observed on the materials, and that such a failure could possibly accumulate dust in a fairly rapid period of time (Tr. 40). The removal of the plates from the conveyor would not pose a hazard to employees in the area from which they were removed because the walkway would not normally take anyone to that particular area (Tr. 49).

Citation No. 2879742 - 30 C.F.R. 56.6112

Mr. Smiser stated that he issued the citation after finding that the last safety fuse burning rate posted in the magazine was dated 1985. Since his inspection was conducted in 1987, he was concerned that the 1985 burning rate may not have referred to the identical material which was burned and then marked on the wall for use in 1987. He was also concerned with the fact that the 1985 fuse burning rate was currently being maintained as it was in 1985, and that explosives "have of a way of aging unpredictably." He believed that a more current rate should have been posted, and he pointed out that the explosive manufacturer's literature suggests that the age of explosives in very unpredictable in terms of performance. Under these circumstances, he stated that "I was not comfortable with the two-year time," and he confirmed that the explosives industry recommends that explosives should be tested at least once a year. He also confirmed that section 56.6112 does not include any dating requirement (Tr. 20Ä21).

Mr. Smiser stated that he based his gravity finding of "reasonable likely" on the fact that if the fuse burning rate was greatly increased, an individual using the explosives may not be able to get away from it before an explosion took place.

If he could not, serious injuries would result to one individual lighting the fuse (Tr. 22). He made a finding of "low negligence" because the respondent made an effort to comply by posting the 1985 fuse burning rate and did not ignore the regulation. Abatement was achieved by testing the current fuse burning rate, and this was done by cutting off a measured length and determining the proper fuse burning rate and re-posting it. He could not recall the exact burning rate time but indicated that it "was very close" to the 1985 rate which had been previously posted (Tr. 22Ä23).

On cross-examination, Mr. Smiser confirmed that the frequency of posting a fuse burning rate, as recommended by a manufacturer such as Dupont, cannot be readily ascertained by anyone by simply looking through MSHA's Part 56 standards, and that one cannot know by reference to these regulations as to whether or not MSHA has incorporated these recommendations as part of its regulatory mandatory standards. He also confirmed that the only way for the respondent to know whether the recommendations by a manufacturer have been adopted by MSHA is to ask an inspector when a citation is issued, or by a reference to the recommendation itself (Tr. 42).

Mr. Smiser stated that while other MSHA standards do incorporate alcohol, tobacco, and firearms regulations and provisions of the National Electric Code as part of its regulations, one cannot find how often a safety fuse burning rate should be posted because Dupont's blasting guides are not incorporated by the cited standard (Tr. 42Ä43). Assuming that the fuse burning rate posted at the time of the citation was the same as the earlier rate 2 years ago, Mr. Smiser saw no need to post it again and he would simply change the date (Tr. 43Ä44). Mr. Smiser confirmed that he determined that the fuse in the magazine which was being used in 1987 came from an identical spool which was purchased in 1985 or earlier (Tr. 44). Mr. Smiser confirmed that periodic blasting was taking place during March, 1987, and assuming his inspection took place in 1985, no citation would have been issued because the burning rate was posted and brought to the attention of mine personnel. He issued the citation because the posted burning rate was outdated and at least 2 years old (Tr. 48Ä49).

Citation No. 2870741 - 30 C.F.R. 56.11012

Mr. Smiser stated that he issued the citation after finding that an opening at the end of a travelway alongside an inclined conveyor running between the cement processing building and the clinker storage area was unguarded and had no barrier to prevent an employee from stepping off the walkway

into the storage area below. Although the respondent's practice concerning the wearing of safety glasses and safety equipment was very good, since the materials being transferred from the belt to the storage area were hot, any given any humidity present in the area, safety glasses can "fog up" very quickly when one steps into the storage area. Mr. Smiser was concerned that the unguarded area posed a potential for someone slipping off the edge of the travelway into the storage bin. Section 56.11012 required a barrier or cover on the open-ended walkway (Tr. 24).

Mr. Smiser confirmed that although the unguarded area was small, with a little walking area, a serviceman would be in the "slipping area" and could fall through the unguarded opening for a distance of 15 to 20 feet or less, depending on the build-up of loose materials in the cone-type configuration bin below. Although he believed that someone falling into the bin would have his fall broken by the loose materials and would probably not suffer fatal injuries, he believed that they would probably suffer a back injury or broken bones. A serviceman in the area servicing the dead pulley and associated conveyor parts would be exposed to the hazard (Tr. 25).

Mr. Smiser stated that he made a finding of "low negligence" because the respondent had not discovered the opening or it probably would have covered it, and MSHA had not previously defined this area as a problem. The violation was abated after the respondent provided a guard at the end of the walkway (Tr. 26).

On cross-examination, Mr. Smiser stated that the conveyor walkway entered the storage area of the adjacent building where the tail pulley was located. He confirmed that it would be unlikely that an employee would use the walkway as a means of traveling from one point to another, except for performing some work in the area. In the event that no work had been done in the area for weeks or months, this would possibly explain why the opening was not discovered, and it was possible that there was extremely infrequent traffic in this area. Even so, he still believed that it was not unlikely that an accident could occur (Tr. 46). However, he would be surprised if there was no one in the area at least once a shift to check the conveyor service points, head pulley gear box, and to check oil levels and grease the equipment (Tr. 47).

Respondent's Testimony and Evidence

Lee Bales, retired quarry superintendent, testified as to his work experience, and he confirmed that he was actively

employed during the time of the inspection. Respondent's representative made a videotape presentation of the locations where the violations in question were issued, and Mr. Bales explained what was depicted in the various scenes shown on the videotape. The videotape was presented for the purpose of familiarizing the court, and the parties, with the location and physical parameters of the areas covered by the citations issued by Inspector Smiser. Respondent's representative confirmed that the videotape was made subsequent to the issuance of the citations, and that it does not show the area concerning the safety fuse burning rate citation (2870742), and that Citation No. 2870741, dealing with the unguarded opening at the end of the conveyor would be covered by another witness (Tr. 61, 79).

Citation No. 2870013

Mr. Bales explained the purpose of the conveyor, and he confirmed that the floor is constructed of grating, and that the conveyor operates 5 days a week 8 hours a day. He stated that an employee walking through the quarry area would have no reason to use the conveyor as a regular means of travel from one place to another, and that they would normally use a staircase to gain access to the crusher building. However, the conveyor walkway is used to gain access to the conveyor in the event of maintenance problems or when the system is down for maintenance or service. Normal operational procedures call for the cleaning of the walkway when maintenance is required, and in his 10 years as a supervisor there were no accidents or injuries caused by materials on the walkway (Tr. 62Ä65). Any greasing could be done from ground level by means of grease hoses (Tr. 77).

Citation No. 2870015

Mr. Bales stated that there is no need to walk through the cited area in the normal course of travel in the plant, and the only need for anyone to be there is to perform maintenance work. A lubrication pump in the area periodically causes oil leakage problems due to the over-tightening of a "weeper seal," and attempts are made to keep any leakage off the walkway floor by means of a bucket kept under the pump. In addition, the area is always wet due to rain water running into the area from outside, and "soakum" material and wooden planks were used to alleviate these oil leakage and water problems until the area could be cleaned up. Mr. Bales stated further that because of production and equipment difficulties in any crushing operation there are occasions where more than one area of the plant is in an unclean condition, and that in

the exercise of his judgment as a supervisor, he must determine which area needs to be cleaned first. Any such decisions are made primarily on the basis of safety and any potential employee hazard exposure, and secondarily, any potential equipment damage. In his view, the cited area was a low hazard area, and that the respondent's safety record attests to this (Tr. 65Ä67).

On cross-examination, Mr. Bales stated that the pump is operating constantly when the crushing system is running, and during the winter months it operates all day. This causes a seal "seepage" problem, and the buckets used to catch the overflow would run over, and this would result in "a film of oil" on the floor. The oil would never run over the wooden planks (Tr. 75Ä76).

Citation No. 7870016

Mr. Bales stated that except for little maintenance work, employees traveling through the cited area would not normally use the passageway as a route to another work place. Any oiling of equipment would be done while the equipment was idle, and any clean-up judgments are made on the basis of the hazard involved, and in his opinion the cited conditions would not likely cause any accident of a reasonably serious nature (Tr. 69).

Citation No. 2870742

Mr. Bales confirmed that he supervised the blasters, and he explained the state training and licensing requirements for blasters. He stated that the respondent uses safety fuses to shoot water out of holes by means of a power primer and a 3Äfoot length of fuse. Other blasting is done by an electrical "non-els" system. All blasters working for him are certified, and they are instructed in the proper use of safety fuses. The safety fuses were not used very often, and at times, 2 or 3 months would pass before there was a need to blast water out of holes.

Mr. Bales stated that he determined the burning rate of the safety fuse by burning it, and the rate was posted in the magazine, a conspicuous place for employees who had access to the fuse. Only he and the blaster had such access, and in his opinion, he complied with the requirements of section 56.6112. He confirmed that the standard contains no time restraints on the frequency of posting the fuse burning rate, and he would always test the fuse burning rate and post it as necessary.

The standard does not require posting each time the fuse rate is tested (Tr. 69Ä73).

On cross-examination, Mr. Bales confirmed that for many years safety fuses have only been used for shooting water out of holes. He also confirmed that he was "comfortable" with the posted 1985 fuse burning rate, and if he were not, he would have checked it and changed the date (Tr. 75).

Kenneth A. Lloyd, Process Engineer, and former maintenance manager for 9 years, testified that he was familiar with most of the plant areas and has had occasion to be in those areas during his employment with the respondent. Referring to a videotape presentation concerning Citation No. 2870741, Mr. Lloyd explained the operation of the conveyor in question and described the location where the citation was issued. He confirmed that the alleged unguarded area was at the end of the conveyor where a chain was installed, but not hooked up (Tr. 86). Respondent's representative asserted that there were two chains in place, but that neither were hooked up. Mr. Lloyd confirmed that the conveyor ends at the point where one can enter the adjacent storage area, and that anyone walking to the end of the conveyor would have to turn around and go back, since the walkway ended at that point (Tr. 87Ä88).

Mr. Lloyd stated that a platform was installed several years ago to facilitate some electrical work in connection with the clinker storage area, but that normal maintenance work was not performed from that platform. The platform is used as access to a gate system used for freeing any material blockage which seldom occurs. Any employee required to be on the platform would use standard safety equipment such as a safety belt and safety line attached to the handrailing (Tr. 89). No one is required on the platform to perform any routine inspection or lubrication of the conveyor, and in his opinion it was not reasonably likely that a serious injury would result from the lack of a barrier at that platform location (Tr. 90).

On cross-examination, Mr. Lloyd confirmed that the chains were originally installed as a safety barrier so that someone could reach into the chute area with a pole to free any material blockage. It was his understanding that the chains were unhooked at the time of the inspection (Tr. 90). In the event the chains are unhooked, an employee would be required to wear a safety belt (Tr. 91). In response to further questions, Mr. Lloyd confirmed that the platform was located at the same location as the end of the conveyor, which ends at the same approximate location. He also confirmed that there

was a space between the platform and the conveyor, and if the chains were not hooked up, there would be a drop to the storage area below. A railing was provided for protection for anyone falling off the conveyor travelway. Respondent's representative confirmed that the chain location was the area which concerned the inspector, and Inspector Smiser agreed. Mr. Smiser could not recall the presence of any installed chain, and confirmed that there was no barrier there. He also confirmed that a handrailing was provided, and assuming the presence of an unhooked chain, he would have issued a citation for not having the chain up. Respondent's representative stated that he was with the inspector during his inspection, and was surprised that the chains were not hooked up. Mr. Smiser confirmed that he did not have his inspection notes with him (Tr. 92Ä95).

Robert McCormac, respondent's representative, reiterated under oath that he was with the inspector and that a chain was installed but was not hooked up. He confirmed that on prior visits the chain was always hooked up, and that he was surprised that it was not hooked up at the time of the inspection. Although the citation does not refer to any chain, he was convinced that the citation was issued because the chain was not attached across the end of the walkway (Tr. 96). He also agreed that there was an opening beyond the chain location (Tr. 97).

With regard to Citation No. 2870015, Mr. McCormac read a prepared handwritten statement explaining the respondent's position concerning the citation. The statement consists of arguments pointing out the modification to the citation, the subsequent conference held with MSHA's district manager, and the fact that the respondent was not afforded another conference after the citation was modified (Tr. 97Ä105). Mr. McCormac conceded that the cited conditions did exist (Tr. 106).

Findings and Conclusions

Fact of Violations

Citation Nos. 2870013 and 2870016, 30 C.F.R. 56.20003(a)

The inspector issued these citations after finding accumulations of rock and materials along the passageway of the No. 3 belt conveyor, and steel plates, wood, and other materials along a passageway at the west end of a primary crusher leaf conveyor. He cited a violation of the housekeeping

requirements of mandatory standard section 56.20003(a), which provides as follows:

> At all mining operations-
>
> > (a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly;
>
> * * * * * * * * * *

In its posthearing arguments, respondent takes the position that the cited areas were not "passageways," and that the citations should be vacated. Citing Webster's Dictionary definition of a passageway as "a way that allows passage to or from a place or between two points," and relying on the testimony of its former quarry supervisor Mr. Lee Bales, that employees walking through the quarry area would not have reason to use the conveyor walkways as a normal means of getting from one place to another, or for access or as a means of travel to any point in the plant, the respondent concludes that the cited areas were not passageways.

The definitions found in section 56.2, do not define the term "passageway." The term "travelway" is defined as "a passage, walk or way regularly used and designated for persons to go from one place to another." Webster's New Collegiate Dictionary defines the term "passageway" as "a way that allows passage."

While it may be true that the No. 3 conveyor passageway was not used by mine personnel in general as a means of travel from the quarry to the plant, the facts show that it was a walkway adjacent to the inclined conveyor which provided a means of travel and access to the conveyor by mine personnel and others who had a need to be there from time to time. As a matter of fact, the parties in this case characterized the "passageway" as a "walkway," and on the facts here presented those terms are used interchangeably. Inspector Smiser testified that the walkway or passageway was used on a regular basis as a means of travel along the conveyor by service personnel for inspection or maintenance purposes.

With regard to the leaf conveyor location, the inspector characterized the passageway as a walkway which provided access to the conveyor and associated equipment, as well as certain removable conveyor inspection and service plates. Although the inspector conceded that the cited area was not frequently travelled and was rather isolated, he confirmed

that a serviceman would be in the area at least once during each shift to service the conveyor and other equipment.

Quarry superintendent Bales testified that the No. 3 conveyor walkway was used as a means of access to the conveyor for maintenance or servicing, as well as for routine cleaning of the walkway. As for the leaf conveyor, he confirmed that while no one would normally use the passageway or walkway as a means of travel to another workplace, service personnel would have occasion to be in the area for routine cleanup or maintenance work.

Respondent's reliance on the Allied Chemical Corporation decision, 2 FMSHRC 950 (April 1980), is not well-taken. In that case, the operator was cited with a violation of mandatory safety standard section 56.11Ä1, which required that a safe means of access be provided and maintained to all working places. The violation was issued after an inspector found an accumulation of muck on a platform. Former Commission Judge Forrest Stewart vacated the citation after finding that the record did not establish that the platform was a "working place" with the definition of that term pursuant to section 56.2, because there was no evidence that any work was being performed, had ever been performed in the past or would be performed in the future, while the accumulation was present. Judge Stewart observed that the cited standard was not a housekeeping standard, but one requiring safe access to places where work is being performed.

The Standard Slag Company decision, 2 FMSHRC 3312, 3324 (November 1980), cited by the respondent, also concerned a violation of the safe access requirement of section 56.11Ä1, and I vacated the citation after finding that a cited catwalk and platform under a conveyor was not a "working place" within the definition found in section 56.2. The Magma Copper Company case cited by the respondent, 1 FMSHRC 837, 856 (July 1979), concerned a violation of section 57.11Ä12, which required that openings above, below, or near travelways be protected by barriers. I vacated the citation after finding that an elevated platform located 100 feet off the ground, and which was used infrequently, was not a travelway within the meaning of the cited standard or the section 57.2 definition of that term.

In the instant case, the respondent is charged with a violation of the housekeeping requirements of section 56.20003(a) which required passageways to be kept clean and orderly. It is not charged with a failure to provide a safe means of access to a working place. Further, the fact that clean-up of the conveyor adjacent to the cited passageway was

a regular part of the respondent's maintenance effort is only relevant insofar as the negligence and gravity connected with the violation is concerned. It may not serve as an absolute defense in a situation where the inspector finds an accumulation of rock and materials which may pose a hazard to anyone walking along the conveyor passageway. The presence of such accumulations do not comply with the requirement that such areas be kept clean.

The respondent has not rebutted the fact that the cited accumulations of rock materials were in fact found by the inspector along the cited conveyor walkway or passageway in question, nor has it rebutted the existence of the steel inspection plates, wood, and other materials such as cans of lubricant on the walkway on the location of the leaf conveyor. The cited standard section 30 C.F.R. 56.20003(a), requires that such areas be kept clean. Given the existence of the materials found by the inspector, I conclude and find that the cited areas were not maintained in a clean condition as required by the cited standard, and that the failure by the respondent to keep these areas clean constituted violations of the standard. Further, I reject the respondent's arguments that the cited areas were not passageways. To the contrary, regardless of whether they are characterized as "passageways" or "walkways," the facts here establish that the cited locations provided a means or travel, access, and passage to and from the cited areas by mine personnel who would have a need to be there for service, maintenance, or cleanup work. Accordingly, the citations ARE AFFIRMED.

Citation No. 2870015 - 30 C.F.R. 56.20003

This citation was issued on March 24, 1987, after the inspector found some oil spillage on the floor area at the primary crusher hydraulic control center. He characterized the spillage as "combustible," and stated that it was large enough to cover the floor areas used as a passageway. The inspector stated that the spillage was "not removed in a timely manner, or controlled to prevent a fire hazard," and he cited a violation of mandatory standard section 56.4102, which provides as follows:

> Flammable or combustible liquid spillage or leakage shall be removed in a timely manner or controlled to prevent a fire hazard.

The citation was subsequently modified on May 11, 1987, and it was served on the respondent. The modified citation

deleted any reference to section 56.4102, and charged a violation of the housekeeping requirements of section 56.20003, which provides as follows:

> At all mining operations--
>
> (a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly;
>
> (b) The floor of every workplace shall be maintained in a clean and, so far as possible, dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable; and
>
> (c) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards, as practicable.

In addition to the change in the referenced standard allegedly violated, the cited condition or practice was modified to read as follows:

> The floor at lower level of the primary crusher work area was not maintained in a clean and dry condition. The hydraulic oil spillage and leakage at the hydraulic control center covered the floor area used as a passageway.

Inspector Smiser confirmed that the modification was made by his supervisor Russell Smith because Mr. Smith made a determination that the hydraulic oil spill was not combustible as Mr. Smiser originally had believed.

In its posthearing brief, the respondent argues that the amended citation is procedurally defective because MSHA failed to provide the respondent with an opportunity for a conference with its district manager after the modification of the citation, and that the inspector was not made available to the respondent for a post-inspection conference to discuss the amended citation. Although the citation was issued under the same number as the original citation, the respondent takes the position that it was in fact a new citation citing a new standard, and that it required a notification to the respondent of its right to a conference on the newly amended citation.

The respondent concedes that it was afforded a conference with the district manager on the original citation. However, it takes the position that to change a citation from a flammable liquid to a housekeeping violation because evidence submitted by the respondent during the conference proved the inspector wrong with respect to the question of the combustibility of the oil spillage is an abuse of MSHA's discretion. Citing the decision in Standard Slag Company, 2 FMSHRC 3312, 3322Ä3323 (November 1980), and El Paso Rock Quarries, Inc., 1 FMSHRC 35, 38 (January 1981), the respondent asserts that MSHA has not always been allowed the discretion to modify citations once they are written.

In the Standard Slag Company case, I rejected MSHA's attempts to amend its civil penalty proposal to alternatively charge an operator with a violation of a standard different from the one originally charged. The facts in that case reflect that MSHA's attempts to amend the citation came after the trial of the case after all of the evidence was in, and it took the form of a motion filed by MSHA as part of its post-hearing arguments. In the El Paso Rock Quarries case, the Commission affirmed the trial ruling of a judge who denied MSHA's request at the opening of the hearing to amend a citation to reflect a change in the originally cited standard. The Commission held that "Granting or denying amendments is largely a discretionary matter with the judge," and it found no abuse of discretion, even though it may have ruled differently as an initial matter.

The facts in the instant case are clearly distinguishable from those in Standard Slag and El Paso Quarries. In the case at hand, the original citation was amended and modified prior to the filing of the case with the Commission. A copy of the modified citation was served on the respondent, and the respondent has had its day in court and has been given a full opportunity to present its defense. Further, there is no evidence in this case that the respondent ever requested a conference with MSHA on the newly amended citation. While it is true that 30 C.F.R. 100.6, provides an opportunity to a mine operator to request a conference upon notice from MSHA, I note that the granting of such conferences is within MSHA's sole discretion. In any event, I find no basis for concluding that the respondent has been prejudiced by MSHA's failure to notify it of its right to a conference or because a conference was not held. The respondent has had a full opportunity to be heard on the merits of the alleged violation during the hearing on the contested citation, including its right to confront and cross-examine the inspector, and to present its testimony

and evidence in defense of the citation. Under the circumstances, the respondent's assertion that the contested modified citation was procedurally defective IS REJECTED.

With regard to the merits of the citation, the respondent argues that the cited location was not a "passageway," and it cites the testimony of Inspector Smiser who indicated that once an employee goes into this area the only way out is the way he or she came in, and that it would be unlikely for employees in casual travel through the plant area to use this "passageway." Respondent also cites the testimony of Mr. Bales who indicated that the access to this area leads nowhere and there would be no need for people to walk this area during the course of their daily travel in the plant.

For the reasons stated in my previous findings concerning Citation Nos. 2870013 and 2870016, the respondent's "passageway" arguments are rejected. The respondent has tacitly admitted that the cited location provided an access route to the crusher unit, and Inspector Smiser testified that service personnel were in the area periodically to check the hydraulic oil used for the crusher. Mr. Bales confirmed that people would be in the area to perform maintenance work, and that a lubrication pump in the area periodically presented known leakage problems which required a bucket to be kept under the pump to prevent leakage onto the walkway floor. Further, the placement of wooden planks and "soakum" material in the area in an effort to alleviate the leakage problems supports a reasonable conclusion that personnel had a need to be in the area to perform work. Under these circumstances, it seems clear to me that the cited location was not only a passageway providing access to the area, but was also a workplace area which was required to be kept clean. The respondent has not rebutted the existence of the oil spillage and leakage as described by the inspector, and the placement of planks, and the use of "soakum" and a bucket reasonably suggest that the spillage covering the cited area was more than "a film of oil" as suggested by Mr. Bales. Since the area was not kept clean and dry as required by the standard, I conclude and find that a violation has been established, and the citation IS AFFIRMED.

Citation No. 2870742 - 30 C.F.R. 56.6112

The inspector issued this citation after finding that the burning rate of the safety fuse used at the quarry for blasting purposes was not measured, posted conspicuously, or brought to the attention of mine personnel engaged in blasting activities. He cited an alleged violation of mandatory safety standard section 56.6112, which provides as follows:

> The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all persons concerned with blasting.

Inspector Smiser confirmed that he issued the citation because he believed that the posted fuse burning rate was outdated and at least 2 years old. However, he conceded that the cited standard does not include any dating requirements for determining the fuse burning rate, and the credible evidence produced by the respondent, including the inspector's own admissions, reflects that the respondent did in fact comply with the standard by measuring the burning rate of its fuses, posting the results in a conspicuous place, and bringing it to the attention of personnel engaged in blasting. Respondent's evidence also established that all certified blasters were instructed in the proper use and handling of explosives, and that all fuses were properly tested and the fuse burning rates posted as necessary. Under all of these circumstances, I agree with the respondent's posthearing arguments in defense of this citation, and I conclude and find that MSHA has advanced no probative credible evidence to support a violation. Accordingly, the citation IS VACATED.

Citation No. 2870741 - 30 C.F.R. 56.11012

The inspector issued this citation after finding that an opening at the end of a travelway alongside an inclined conveyor located between the cement processing building and a clinker storage area was unguarded and had no barrier to prevent anyone from stepping or falling off the end into the clinker storage area below. Mr. Smiser further described the location of the unguarded area as the north side of the conveyor where it entered the enclosed building for a short distance around the conveyor head pulley. He cited a violation of mandatory standard section 56.11012, which provides as follows:

> Openings above, below, or near travelways through which persons or materials may fall shall be protected by railings, barriers, or covers. Where it is impractical to install such protective devices, adequate warning signals shall be installed.

Section 5.62 defines a "travelway" as "a passage, walk or way regularly used and designated for persons to go from one place to another."

In its posthearing brief, the respondent asserts that Inspector Smiser's inaccurate testimony regarding the location of the unguarded conveyor location in question should render the citation null and void. This defense is rejected. Although the inspector's testimony may have been imprecise, it seems clear to me from the testimony of both Mr. Lloyd and Mr. McCormac that they were clearly aware of the cited location which the inspector had in mind when he issued the citation. During his video presentation, Mr. Lloyd described the cited location, and Mr. McCormac also pinpointed the area and confirmed that the inspector was concerned about the "opening at the end of the conveyor" where two chains were installed as a barrier, but not hooked up. When asked whether this was the location referred to in the citation, Mr. McCormac replied "yes sir" (Tr. 87). Inspector Smiser in turn confirmed that this was the area he cited (Tr. 88). Further, Mr. McCormac testified that he was with the inspector during his inspection, agreed that there was an opening beyond the location of the chain, and confirmed the cited condition did in fact exist (Tr. 95Ä97; 106).

Respondent further argues that the cited location was not a "travelway" within the definition found in section 56.2, in that it was not regularly used as a means of access in the normal course of travel through the plant area, and was not used for normal maintenance purposes. Respondent's witness Lloyd characterized the cited location as a seldom used "platform" area providing access to a gate system used for freeing up any blocked material. When this is done, an employee would use a safety line or belt attached to the handrailing which was installed around the perimeter of the platform. Mr. Lloyd also confirmed that the area is not used for routine inspections or maintenance, and once reaching the end of the platform, one would have to turn around and go back.

Mr. Lloyd confirmed that the platform was originally constructed a few years ago when there was an electrical problem, and that the chain was installed as a means of a safety barrier in the event one needed to stand on the platform with a pole to free up any material blockage. Mr. McCormac also saw a chain at the cited location, was surprised that it was not hooked up, and he surmised that the citation was issued because the chain was not hooked up. The inspector could not recall any chain in place, and he did not have his inspector's notes with him. Although he confirmed that the citation was abated after a barrier was installed, he did not elaborate further as to the type of barrier which was installed, and the

termination notice issued to abate the citation provides no further information in this regard.

The video tape taken for demonstration purposes during the hearing clearly depicted the installation of two chains across the opening which concerned the inspector, and I find the testimony of Mr. McCormac and Mr. Lloyd with respect to the presence of the chains at the time of the inspection to be credible. I further find Mr. McCormac's conclusion that the inspector probably issued the citation because the chains were not up at the time of his inspection to also be credible. Since the chains were not up and stretched across the opening of the platform at the time of the inspection, one can reasonably conclude that no barrier was provided at that time as a means of protection to prevent one from going off the end of the platform. Assuming that the cited opening was near a travelway as stated in section 56.11012, and as that term is defined by section 5.62, I would affirm the citation based in the undisputed fact that the opening in question was not protected by the chain which was not in place across that opening. However, the critical question here is whether or not the cited location was in fact a "travelway."

Inspector Smiser described the cited location as "small, with a little walking area," and he characterized it as an "open-ended travelway" and "open-ending walkway" (Tr. 23Ä24). He surmised that a serviceman would "probably" be in the area, and "guessed" that he would be within the "slipping area" and could fall through the opening in the course of any "normal work" performed in the area. He also surmised that a serviceman would "probably" be the one in this area for purposes of servicing the head conveyor head pulley and associated parts (Tr. 24Ä26). However, I find no credible evidence to support the inspector's conclusions that any work would be routinely performed at the cited location, and he apparently made no effort to contact any maintenance personnel to confirm that anyone was required to be in the area for the purposes of maintenance. As a matter of fact, he conceded that he based his "low negligence" finding on the fact that the respondent had not previously discovered the opening or that there was a problem in that area (Tr. 26).

Inspector Smiser confirmed that with the exception of doing work in the cited area, which he clearly did not determine as a fact, it was unlikely that anyone would use the "walkway" in question as a means of getting from one point to another. He confirmed that anyone venturing into the area would have to turn around and come back once reaching the end, that it was possible that any foot traffic in the area was

extremely infrequent, and that it was further possible that the reason the respondent did not discover the unprotected area could have been based on the fact that no work had been done in the area for weeks or months (Tr. 46). Although he later contradicted this testimony by stating that he would be surprised if there was no one there at least once a shift, I find no credible evidence to support this speculative conclusion.

The facts presented with respect to this citation are strikingly similar to those presented in a prior case in which an inspector issued a citation for a violation of section 57.11Ä12, which contained language identical to that found in section 56.11012. See: Secretary of Labor v. Magma Copper Company, 1 FMSHRC 837, 856Ä858 (July 1979). In that case the inspector issued a citation after finding that a chain guard which had been installed at the end of a work deck or platform was not hooked across the opening to prevent anyone from falling off the end. I vacated the citation after finding that the evidence did not establish that the infrequently travelled area in question was in fact a travelway within the meaning of the cited standard, or within he meaning of the definition of that term as found in section 57.2, which is identical to that found in section 56.2. In vacating the citation, I made the following observations at 1 FMSHRC 857Ä858:

> I believe the intent of the standard is to protect miners, who on a regular and frequent basis, use designated travelways for movement to and from their regular duty stations or who use such travelways on a regular basis while moving in and about the mine. The facts on which this citation was issued suggest the inspector sought to protect someone working on the platform from falling through the unchained opening. Even so, the standard cited does not lend itself to the factual setting which prevailed on the day the citation issued. The standard required railings, barriers, or covers, and I fail to understand how a hooked chain can be considered as such. In the circumstances, it would appear that the standard is intended to apply to a working place rather than to a travelway, notwithstanding petitioner's assertion at page 6 of its brief that the use of a chain establishes an inference that an opening some 100 feet in the air at the edge of a platform is a travelway.

> * * * If the Secretary desires to afford protection to persons working on elevated platforms, he should promulgate a safety standard covering such situations rather than attempting to rely on a loosely worded and vague standard. It seems to me that the inclusion of the term "working place" as part of section 57.11Ä2 would cure the problem that I have with language which I believe simply does not fit the facts presented.

In view of the foregoing, and on the facts presented in this case, I cannot conclude that the petitioner has established through any probative credible evidence that the cited location in question was near a travelway within the definition of that term found in section 5.62. Accordingly, I find no basis for finding a violation, and the citation IS VACATED.

The Significant and Substantial Violations Issue

A "significant and substantial" violation is described in section 104(d)(1) of the Mine Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 C.F.R. 814(d)(1). A violation is properly designated significant and substantial "if, based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (April 1981).

In Mathies Coal Co., 6 FMSHRC 1, 3Ä4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

> In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard--that is, a measure of danger to safety-contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

In United States Steel Mining Company, Inc., 7 FMSHRC 1125, 1129, the Commission stated further as follows:

> We have explained further that the third element of the Mathies formula "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury." U.S. Steel Mining Co., 6 FMSHRC 1834, 1836 (August 1984). We have emphasized that, in accordance with the language of section 104(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. U.S. Steel Mining Company, Inc., 6 FMSHRC 1866, 1868 (August 1984); U.S. Steel Mining Company, Inc., 6 FMSHRC 1573, 1574Ä75 (July 1984).

The question of whether any particular violation is significant and substantial must be based on the particular facts surrounding the violation, including the nature of the mine involved, Secretary of Labor v. Texasgulf, Inc., 10 FMSHRC 498 (April 1988); Youghiogheny & Ohio Coal Company, 9 FMSHRC 2007 (December 1987).

With regard to Citation No. 2870013, Inspector Smiser testified that while it was unlikely that someone walking along the conveyor walkway in question would fall off to the area below if he were to trip or stumble on the accumulated rock and material, the accumulations did present a tripping or falling hazard, and that it was reasonably likely that in the event of a fall, the individual could sustain a back injury or broken limbs. If it were a serviceman who regularly walked the area, he would more than likely be carrying a grease gun or other equipment in one hand, thus increasing the likely of an injury if he were to fall or trip on the accumulations of materials which ranged in size from three-quarters of an inch to an inch and a half, and which completely covered the walkway surface and ran over the kickplate.

The respondent takes the position that the violation was not significant and substantial. In support of this conclusion, it relies on the testimony of Mr. Bales who indicated that any work being performed on the conveyor would only be done after the area was cleaned up, that no employees used the walkway as a regular of means of travel from one quarry location to another, that most of the conveyor rollers can be greased from hose fittings which hung down to ground level,

and that in the past 10 years there have been no reported accidents or injuries at the quarry.

Mr. Bales confirmed that the conveyor operated 8 hours a day, 5 days a week, and that the walkway where the inspector found the accumulations of rock and materials allowed access to the conveyor for maintenance purposes. Although Mr. Bales indicated that most of the conveyor rollers were serviced from ground level, it was altogether possible that some were not, and the inspector determined that a serviceman inspecting the conveyor regularly travelled the walkway and would be exposed to a tripping or falling hazard. Under the circumstances, I agree with his finding that the cited violation was significant and substantial. Given the extent of the accumulations on the inclined conveyor walkway, and the fact that the conveyor would be operating all day, I believe that one may reasonably conclude that at least one person who would be travelling the walkway while inspecting the conveyor would be exposed to a tripping or slipping hazard, and if he were to trip or fall, it would be reasonably likely that he would suffer injuries of a reasonable serious nature. Accordingly, the inspector's "S & S" finding IS AFFIRMED.

With regard to housekeeping Citation No. 2870015, concerning the fluid spill in the concrete floor area in the crusher plant, I take note of the fact that MSHA's district manager modified the citation because of his apparent conclusion that the fluid was not combustible. Under the circumstances, I conclude and find that the fluid did not present a fire hazard. Inspector Smiser was concerned over a probable slip and fall hazard to a serviceman who he believed would be in the area to check out the crusher unit. However, the evidence establishes that the respondent had installed wooden planks and used an absorbent material in efforts to control the spillage caused by a known problem, and that the floor area in question was surrounded by handrails. Although the citation stated that the spill was large enough to cover the floor area, there is no evidence that it covered the floor planks, and Inspector Smiser conceded that the respondent installed the planks and used the absorbent material in an effort to provide safe access to the cited area in question. Mr. Bales confirmed that the spill would never run over the wooden planks. Under all of these circumstances, I conclude and find that a slip or fall would be unlikely, and the inspector's "S & S" finding IS VACATED.

With regard to Citation No. 2870016, Inspector Smiser testified that the existence of steel plates, stacked on top of each other in a "tipping" manner, and located at the top of

a staircase leading to a walkway, obstructed access to the area in that one had to step on the plates to proceed along the walkway. He also found wood and other materials such as lubricant cans on the walkway, and he concluded that all of these materials posed a slipping and falling hazard to a serviceman who would likely be using the walkway to gain access to the equipment at least once a shift. The inspector concluded that it was reasonably likely that injuries of a reasonable serious nature would result in the event someone slipped or fell while stepping over the accumulated materials in question. The respondent has advanced no credible evidence to rebut the inspector's findings, and I agree with his conclusion that the violation was significant and substantial. Accordingly, his "S & S" finding IS AFFIRMED.

Size of Business and Effect of Civil Penalties on the Respondent's Ability to Continue in Business

Based on the stipulations by the parties, I conclude that the respondent, as a corporate operator, is a large mine operator, and that the mine in question was medium in size and scope. The parties stipulated that the payment of civil penalties for the violations in question will not adversely affect the respondent's ability to continue in business.

History of Prior Violations

The parties stipulated that the respondent's history of prior violations consists of 10 citations issued over 40 inspection days during the 24Ämonth period preceding the inspection conducted by Inspector Smiser. I conclude and find that the respondent has a relatively good compliance record which does not warrant any additional increases in the civil penalties which have been assessed by me for the violations which have been affirmed.

Good Faith Compliance

I conclude and find that the respondent exercised good faith in timely abating all of the violations which have been affirmed in this proceeding.

Negligence

I conclude and find that all of the violations which have been affirmed resulted from the respondent's failure to exercise reasonable care, and that they all resulted from ordinary negligence on the respondent's part.

Gravity

I conclude and find that Citation No. 2870015 concerning the fluid spillage on the floor of the crusher plant was non-serious. For the reasons stated in my "S & S" findings, I further conclude and find that Citation Nos. 2870013 and 2870016, concerning slip and fall hazards, were serious violations.

Civil Penalty Assessments

On the basis of the foregoing findings and conclusions, and taking into account the requirements of section 110(i) of the Act, I conclude that the following civil penalty assessments are reasonable and appropriate for the violations which have been affirmed:

Citation No.	Date	30 C.F.R. Section	Assessment
2870013	03/24/87	56.20003(a)	$ 91
2870015	03/24/87	56.20003	$ 35
2870016	03/24/87	56.20003(a)	$ 79

ORDER

The respondent IS ORDERED to pay the civil penalty assessments in question to MSHA within thirty (30) days of the date of this decision, and upon receipt of payment, this proceeding is dismissed.

Citation No. 2870742, March 24, 1987, citing a violation of 30 C.F.R. 56.6112, and Citation No. 2870741, March 25, 1987, citing a violation of 30 C.F.R. 56.11012, ARE VACATED.

George A. Koutras
Administrative Law Judge