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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

v.

TEXAS ARCHITECTURAL
AGGREGATES INCORPORATED,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 88-55-M
A.C. No. 41-01001-05506

San Saba Plant

DECISION

Appearances: E. Jeffery Story, Esq., Office of the
Solicitor, U.S. Department of Labor, Dallas,
Texas, for the Petitioner;
David M. Williams, Esq., San Saba, Texas, for
the Respondent.

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated 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). Petitioner seeks a civil penalty assessment in the amount of \$91 for an alleged violation of mandatory safety standard 30 C.F.R. 56.11001. The respondent filed a timely answer contesting the alleged violation, and a hearing was convened in San Antonio, Texas. The parties waived the filing of posthearing briefs, but I have considered the arguments made on the record during the course of the hearing in my adjudication of this matter.

Issues

The issues presented in this case are (1) whether the conditions or practices cited by the inspector constitutes a violation of the cited mandatory health standard; (2) the appropriate civil penalty to be assessed for the violation, taking into account the statutory civil penalty criteria found

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in section 110(i) of the Act; and (3) whether the violation was "significant and substantial." Additional issues raised by the parties are identified and disposed of in the course of this decision.

Applicable Statutory and Regulatory Provisions

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

Stipulations

The parties stipulated to the following (Tr. 5):

1. The name of the respondent company is Texas Architectural Aggregate, Inc. with the place of business at San Saba, Texas.
2. Jurisdiction is conferred upon the Federal Mine Safety and Health Review Commission under the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq. The alleged violation of the Act took place in or involves the mine that has products which affect commerce.
3. The name of the mine is San Saba Plant and Quarry, identification number 41-0100. The mine is located at or near San Saba, Texas; San Saba county. The size of the company is 118,207 production tons or hours work per year, and the size of the mine is 83,300 production tons or hours work per year.
4. The total number of inspection days in the preceding 24 months is 22 days.
5. The total number of citations in the preceding 12 months is 46.

The parties also stipulated to the admissibility of an MSHA computer print-out concerning the respondent's prior history of violations, and several photographic exhibits (Tr. 6; exhibits P-2, P-3; R-1 through R-6).

Discussion

Section 104(a) "S & S" Citation No. 2868984, issued by MSHA Inspector Edward R. Lilly on July 27, 1987, cites an alleged violation of 30 C.F.R. 56.11001, and the condition or practice is described as follows:

Safe access was not provided to the disconnect and starter boxes to the big and small cone crusher. Persons were required to crawl over conveyor belt and steel "I" beam of the jaw crusher. The V-belt drive unit was located beside electrical boxes exposing person to moving machine parts and pinch points.

Petitioner's Testimony and Evidence

MSHA Inspector Edward R. Lilly testified that he issued the citation because safe access was not provided to the electrical switch boxes in question, in that a person would have to climb across a conveyor belt, step over an I beam, and across a V-belt drive unit to gain access to the switch boxes to deenergize the power in the event of an emergency. Mr. Lilly confirmed that the boxes were located under the crusher building control booth where the crusher operator is located to run the equipment. The boxes were located on a platform 7 or 8 feet off the ground, and in order to reach that location, foreman Kenneth Crim advised him that the crusher operator would use a ladder located on the other side of the building, and Mr. Lilly stated that once one reached the ledge of the platform by means of the ladder, he would have to crawl across a conveyor belt and around the end of the V-belt pulleys to gain access to the boxes. In his opinion, in the event of an emergency, one would have too many problems in climbing over these obstacles to timely turn off the switches. Mr. Lilly identified a photograph he took on May 5, 1988, showing the area in question, and he confirmed that nothing had changed since the day he issued the citation, and he described what was in the photograph in response to several voire-dire questions by respondent's counsel (Tr. 14Å19, exhibit PÅ3).

Mr. Lilly confirmed that the crusher operator was in the control booth at the time of his inspection, and when he asked the operator how he gained access to the switch boxes in order to turn off the power for repair work, the operator advised him that he had to climb over the conveyor belt and across the tail pulley to pull the switches and lock out the equipment. Mr. Lilly confirmed that a stop-start button was located

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inside the booth to stop and start the equipment, but the main disconnect switch consisted of the cited boxes in question. Mr. Lilly further confirmed that the operator he interviewed was the person responsible for any maintenance work on the equipment, and that he would pull the main switches to kill the power when there was maintenance work to be done. The operator further advised him that he had on occasion pulled the main power switches in question, and when asked to describe the route that he took to accomplish this task, the operator advised him as follows (Tr. 24Å25):

THE WITNESS: He told me that on occasion when the crusher was plugged up or they had to go into the crusher to get something out of it, that in order to make it safe, they would have to go pull the main power on this. And I asked him then how did he got over to pull the main power switch.

He said he crawled across the conveyor belt, stepped on the I-beam between the V-belt drive, and over the V-belt drive onto the platform where the switch box is located.

JUDGE KOUTRAS: Did he indicate to you whether or not all this equipment was operating or not operating? Or was that whole area shut down when he did this?

THE WITNESS: The whole area was shut down.

JUDGE KOUTRAS: Then he wasn't crawling over an operating conveyor belt?

THE WITNESS: No, sir. He pushed the button, just the start/stop button to shut that down. But in order to go inside of a piece of equipment, the switch has to be pulled and locked out. A lock physically put on the switch.

JUDGE KOUTRAS: But I am talking about crawling over--the route he took to get to these junction boxes--was he crawling over equipment that was energized and operating? Or was he working--crawling over equipment that was shut down and locked out?

THE WITNESS: He was crawling over equipment that was shut down, not locked out because he

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had to pull the power to lock it out. But that equipment--if anyone had come up in the control booth, could push the button and start the equipment up. That is why we require it to be locked out.

Mr. Lilly confirmed that his inspection party gained access to the switch boxes in question by means of a ladder pointed out to them by Mr. Crim. Mr. Lilly stated that he climbed up the ladder and climbed over the conveyors to reach the switch boxes. He confirmed that the switch boxes would have been directly accessible from the ground by means of a ladder placed directly up to the location of the boxes from ground level, but that no ladder was present (Tr. 30Å31).

Mr. Lilly stated that in order to abate the citation, he allowed the respondent to construct a ladder as a means of direct access to the switch boxes without the necessity of climbing over the conveyors. Once the ladder was used to gain access to the switches, it was to be removed and hung out of the way so that there was no access to the area for anyone except employees who had business there. The ladder was permitted as a temporary means of abatement so that the respondent would not have to guard all of the moving machine parts. Mr. Lilly stated that Mr. Williams advised him that he was in the process of building a new motor control center, and the switch boxes in question were to be eventually housed in a new building. Although some progress has been made to relocate the switch boxes, Mr. Lilly confirmed that they are still in the same location (Tr. 31Å32).

Mr. Lilly agreed that the use of a ladder for direct access to the switches, without the necessity for climbing over unguarded conveyors, would have been compliance, but at the time of his inspection, no ladder was being used. He agreed to the use of a ladder after the citation was issued because the respondent advised him that in a few months the switch boxes would be relocated, and he did not wish to subject the respondent to the financial burden of guarding the conveyors since the boxes were going to be moved (Tr. 35).

On cross-examination, Mr. Lilly identified the crusher operator with whom he spoke on the day of his inspection as Phillip Brown, and he confirmed that Mr. Brown advised him that the route he took to reach the switch boxes was the one he described previously. Mr. Lilly could not recall asking Mr. Brown how long he had been employed at the mine (Tr. 36Å37).

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Mr. Lilly confirmed that he is not an electrician. He stated that he was told by Mr. Crim and Mr. Brown that the cited switch was the main switch, and he understood that the stop-start switches were in the control booth. Referring to respondent's photographic exhibit RÄ5, Mr. Lilly identified the large switch box with a handle on the right as a main disconnect, but did not believe it was the main disconnect for the entire plant because the switch boxes underneath fed through the large box in question. He identified the red and black switch buttons shown in photographic exhibit RÄ6 as the stop-start switches inside the booth, and that all of the equipment was started and stopped with these switch buttons. Mr. Lilly believed that the large switch shown in exhibit RÄ5 controls the primary crusher, and the cited switches controlled the large and small cone crushers, and he confirmed that this is how it was explained to him by Mr. Crim (Tr. 39Ä40).

Referring to photographic exhibits RÄ1 and RÄ2, Mr. Lilly confirmed that access to the cited switches could be made with no problem from under the open areas shown in the photographs by means of a ladder. Mr. Lilly stated that he observed no built-in ladders and that Mr. Crim advised him that he would have to build one. He also stated that while there was a ladder hooked to the side of a bin when he took the picture on June 27, 1988, he observed no ladders on the day of his inspection, and that he first observed a ladder when he returned to the mine 2 weeks or a month later to abate the citation. At that time, Mr. Crim showed him a ladder which he had constructed with two-by-fours (Tr. 41Ä43).

In response to further questions, and referring to photographic exhibits RÄ1 and PÄ3, Mr. Lilly identified the location of the cited switches on the platform area beneath the operator's control booth. He indicated that the operator would exit the door to the booth, and go down the stairs to the platform below, and across the conveyor belt and an I-beam to gain access to the switches in question (Tr. 50Ä53).

Mr. Lilly confirmed that both Mr. Crim and Mr. Brown told him that they had occasion to use the access route he described to reach the switch box locations, and Mr. Crim confirmed to him that this was the only available route. Mr. Lilly also confirmed that he was told that the switch boxes were required to be disengaged infrequently, or every 6Ämonths, or twice a day or a week, depending on the scheduled change out of the jaw crushers, and the type of materials being processed (Tr. 58Ä59).

Respondent's Testimony and Evidence

Joe R. Williams, respondent's president and general manager, testified that he was familiar with the plant electrical system and helped design the original plant when it was built in 1960 and 1961. Referring to photographic exhibits RÄ1 through RÄ6, Mr. Williams explained the location and function of several switch boxes used in the operation of the equipment. He identified the switch box which concerned Inspector Lilly as the one located on the lower deck beneath the control booth as depicted in exhibit RÄ1 (Tr. 62Ä66).

Mr. Williams stated that the disconnect switches for the large and small cone crusher would be accessed in the event of a malfunction in the starter motor, and that Mr. Crim would need to access the switches in the event of a malfunction, but that the crusher operator generally does not need to be in the area. In the event of a malfunction, or the need to test the equipment, or to repair any heater circuits, an electrician would be called to do this work. This would occur once every year or two, and in the event of a cone malfunction, or the need to make electrical repairs, the entire plant operation would be shut down (Tr. 67Ä69).

Mr. Williams believed that access to the cited switch box could be made from the operator's work platform by sitting on the deck and "take your foot and shove the controls down. Cut off the breaker." One could also "belly down there and reach with your hand and shut it off and turn it on. It is awkward" (Tr. 70). Malfunctions in the disconnect box would include a blown fuse or circuit problems which would necessitate shutting down the entire plant in order to service the box (Tr. 70Ä71). Several years may pass before any such problems appear (Tr. 72).

Mr. Williams stated that an angle iron movable ladder is located at the crusher to climb up onto the work deck on the opposite side of the crusher, but it does not appear in any of the photographs, and when asked whether a ladder was present when Mr. Lilly issued the citation, Mr. Williams responded "probably we did" (Tr. 73). He confirmed that the crusher in question is operated by three people (Tr. 73). If an electrician were required to service the disconnect box in question, he would use a ladder to gain access to it (Tr. 75).

Mr. Williams confirmed that Mr. Brown had been employed at the plant for approximately 1 year at the time of the inspection and he was in training as a crusher operator. He also confirmed that the access route that Mr. Lilly stated was

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described to him by Mr. Crim was a possible path of access to the cited boxes, and that the use of a ladder on the other side of the crusher was also a means of access. Regarding the route taken by Mr. Crim, as described by Mr. Lilly, Mr. Williams stated "it is not really all that damn difficult. You can step across the main conveyor, * * * you don't crawl under any conveyor because the return conveyor doesn't come out that far" (Tr. 77).

Mr. Williams identified the ladder he was referring to as the one shown in exhibit PÅ2 (Tr. 78). Counsel David Williams stated that the ladder is no longer there, and that access to the switch boxes would not normally be made by the ladder shown in the photograph, but rather by a ladder placed at another location (Tr. 90). Joe Williams was certain that a ladder was available for use as access to the cited boxes at the time the inspector issued the citation (Tr. 95). When asked why Mr. Crim would have told Mr. Lilly that no ladders were available on the premises, Mr. Williams responded "unless Mr. Crim couldn't think fast enough to find a ladder. And I think that is probably the whole circumstances" (Tr. 107). When asked whether he doubted that crusher operator Brown told the inspector about the route he took to the switch boxes, Mr. Williams stated that he probably and very possibly made the statement to the inspector (Tr. 95).

Inspector Lilly was recalled, and he confirmed that while he issued guarding citations during his inspection of July 27, 1987, none of these involved any of the conveyor equipment along the route described as an access to the cited switch boxes, and no danger of falling citations were issued (Tr. 101Å102). Mr. Lilly reiterated that he spoke with Mr. Crim, and that they both looked for an available ladder, but could not find one. The metal angle iron ladder referred to by Mr. Williams could have been taken down, but this would have resulted in no ladder being available for access to the crusher building (Tr. 103).

Mr. Lilly confirmed that he told Mr. Crim that Mr. Brown told him that he accessed the switch boxes by the route previously described, and that Mr. Crim said "I have gone that way myself on occasions to pull the switch." Mr. Lilly confirmed that he and the other inspector inspected the switch boxes, and "if there is a ladder in that picture, it was because we placed one thereto get access to that platform--the electrician and I." Mr. Lilly confirmed that the ladder he used was the angle ladder described by Mr. Williams (Tr. 104). Mr. Lilly confirmed that had Mr. Brown shown him a ladder or advised him that he used a ladder as a means of access to the

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cited switch boxes, he would not have issued the citation (Tr. 105).

Arguments Presented by the Parties

The parties agreed that Mr. Lilly issued the citation based on his conclusion that in the normal course of business, if someone had to go to disengage the cited disconnect boxes, the route of travel he would take to accomplish this would be to go down one level from the control booth and go over a conveyor and cross a steel beam to reach the boxes. They also agreed that Mr. Lilly's conclusion regarding the access route came from his conversations with the crusher operator and foreman, Mr. Brown and Mr. Crim (Tr. 81).

Petitioner's counsel asserted that the testimony of Inspector Lilly establishes that a safe means of access was not provided to the switch boxes in question, and that respondent's president Joe Williams agreed that the statements by Mr. Crim and Mr. Brown to the inspector were possibly correct. Under the circumstances, counsel asserted that Inspector Lilly acted reasonably in issuing the citation (Tr. 108).

With regard to the inspector's "significant and substantial" finding, petitioner's counsel asserted that notwithstanding Mr. Lilly's agreement that the plant would be shut down before any maintenance work was performed, and that no one would likely cross over any moving conveyor belts to reach the switch boxes, there was a potential for someone falling 7 or 8 feet to the ground, even if the belts were not running (Tr. 109). Counsel acknowledged that Mr. Lilly issued no citations for the failure to use a safety belt (Tr. 110).

Respondent's counsel took the position that since access to the cited switch boxes was not frequent, and occurred once a year or every other year, the location could hardly be considered a normal working place (Tr. 96). Respondent's counsel also indicated that when he first reviewed this case, he believed that Inspector Lilly had observed something that led him to believe that safe access was not provided to the cited switch boxes, and he had no information indicating that the crusher operator had spoken to Mr. Lilly and informed him about the route which he had taken to the switch boxes. Counsel stated further that since Mr. Lilly made reference to moving machine parts and pinch points, he found it difficult to believe that such a serious "significant and substantial" situation could be abated by simply putting up a ladder (Tr. 111).

Findings and Conclusions

Fact of Violation

The respondent is charged with a violation of mandatory safety standard 30 C.F.R. 56.11001, for failure to provide a safe means of access to the disconnect and starter boxes used in conjunction with the big and small cone crushers. Section 56.11001, provides that "Safe means of access shall be provided and maintained to all working places." The phrase "working place" is defined by section 56.2, as "any place in or about the mine where work is being performed."

In Massey Sand and Rock Company, 4 FMSHRC 188 (February 1982), 2 MSHC 1722, a miner walked up a conveyor belt to reach a head pulley located 35 to 40 feet off the ground so that it could be greased. As he began to grease the head pulley, the conveyor started and threw him to the ground. Judge Morris affirmed a violation of the safe access requirements of section 56.11001, and found that the operator could have provided a variety of means and access, including a ladder.

In Mohave Concrete & Materials Company, 6 FMSHRC 1195, 1198 (June 1983), 3 MSHC 1040, the judge affirmed a violation of section 56.11001 in a situation where an inspector observed a crusher operator climb up a crusher feeder frame and stand on a beam to perform his work. The violation was abated after the operator provided a platform and ladder for access to the work station in question.

The respondent's suggestion that the location of the disconnect boxes may not be considered a "working place" because visits to that area were infrequent IS REJECTED. Regardless of the frequency of their visits to the switch box area, when Mr. Crim and Mr. Brown had occasion to go to the area they were there to pull the power for the purpose of facilitating maintenance or repair work on the equipment, the clearing of clogged materials, to check the circuit or blown fuses, or to change out the jaw crushers. Under the circumstances, the connector box location was clearly a place where work was being performed within the meaning of "working place" as defined by section 56.2.

With respect to the respondent's suggestion that a ladder was available for access to the cited boxes, I find no credible evidence to support this contention. The evidence clearly establishes that no ladder was used by Mr. Brown or Mr. Crim when they had a need to access the boxes. Further, although Inspector Lilly stated that he used a metal angle iron ladder

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to access the platform where the boxes were located, the evidence of record suggests that this particular ladder was not used for normal access to the boxes and was located at another place. Further, I find no credible evidence to rebut Inspector Lilly's credible testimony that the respondent failed to establish that ladders were used as a normal and regular access route to and from the cited boxes in question.

Inspector Lilly's testimony, which I find credible, establishes that at least two individuals, Mr. Brown and Mr. Crim, gained access to the cited boxes in question by a means of travel that took them over a conveyor belt and across an I-beam to the location of the boxes. These individuals had occasion to go to the boxes by means of the route described by the inspector, and the fact that they may have gone their rather infrequently is no defense to the violation. Although the respondent raised some doubt as to whether or not Mr. Crim made the statements attributed to him by Mr. Lilly, respondent conceded that Mr. Brown probably made the statements. In any event, since the respondent did not call Mr. Brown or Mr. Crim to testify in this case, Mr. Lilly's un rebutted testimony supports his belief that the route of travel taken by these individuals exposed them to certain trip and fall hazards, as well as to potential hazards from the unguarded equipment and machine parts and pinch points described by the inspector. Under the circumstances, I conclude and find that the evidence establishes that the access route described by the individuals to the inspector was unsafe, and that a violation of section 56.11001 has been established. Accordingly, the citation IS AFFIRMED.

Significant and Substantial Violation

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, 1574-75 (July 1984).

Mr. Lilly believed that there was a reasonable likelihood of an injury to an employee who had to cross the conveyors to reach the location of the switch boxes, and there was a possibility of tripping or falling if the conveyor were muddy or if a lot of dust was present (Tr. 23). He confirmed that a citation was also issued for not locking out the equipment, but he could not recall whether it involved the same safe access condition (Tr. 26). Mr. Lilly was also concerned about possible sprains or broken bones if anyone fell off an opening between the conveyor and I-beam, or while standing or stepping onto the platform from the I-beam (Tr. 27).

Mr. Lilly agreed that Mr. Crim and Mr. Brown would not be climbing over moving conveyors belts, and that the entire area was shut down when these individuals had a need to access the boxes. However, Mr. Lilly testified that crusher operator Brown informed him that even though he shut the equipment down by means of the stop-start switch in the control booth, he

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still had to go to the location of the boxes to pull the main power in order to make the crusher area safe for anyone freeing plugged material from it. Mr. Lilly believed that anyone could have entered the control booth and activated the equipment by means of the start-stop buttons, and I believe that in the event this occurred before the main switch was disconnected, and while someone was on the conveyors or in the proximity of unguarded and moving machine parts, a potential hazard and injury would be present.

Even assuming that the equipment over which Mr. Crim and Mr. Brown had to climb was totally deenergized and locked out while they were climbing over it, Mr. Lilly was still concerned that slipping or tripping hazards would be presented by the route of travel taken by these individuals, particularly if the conveyor was wet, muddy, or dusty. They would also be exposed to a falling hazard from the I-beam over which they had to step to reach the platform where the boxes were located. Under all of these circumstances, I conclude and find that Mr. Lilly's "significant and substantial" finding was reasonable and proper, and IT IS AFFIRMED.

History of Prior Violations

The parties stipulated that during the preceding 24-month period, respondent was subjected to 22 inspection days, and was issued 46 citations during the preceding 12-month period. Petitioner submitted an unevaluated computer print-out listing the respondent's violation history for the period March, 1978 through June, 1988, which contains no information as to the civil penalties assessed for each of the violations listed, or any information as to which of the citations have been paid, and which have not (exhibit PÄ1). In any event, after review of this information, I conclude and find that for the immediate 24-month period prior to the issuance of the violation which has been affirmed in this case, the respondent had an average history of compliance at its San Saba plant and quarry. I further conclude and find that respondent's compliance record is not such as to warrant any additional increases in the civil penalty assessment for the violation in question.

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

Based on the stipulations of the parties, and the testimony of Mr. Williams concerning the San Saba quarry production and the number of employees operating the plant, (Tr. 72), I conclude and find that the respondent is a small mine operator. Absent any information to the contrary, I also conclude and

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find that the payment of the civil penalty assessment for the violation in question will not adversely affect the respondent's ability to continue in business.

Gravity

I conclude and find that the violation was serious. The failure to provide safe access to the cited boxes in question presented a potential injury to the employees climbing over the conveyors and I-beam in question, and in the event of a slipping, tripping, or falling accident, injuries of a reasonably serious nature could be expected.

Negligence

I conclude and find that the violation was the result of ordinary negligence on the part of the respondent because of its failure to exercise reasonable care to insure that its employees used a safe access route for reaching the cited boxes. It seems to me that this could have been accomplished by simply providing a ladder in the immediate ground level area beneath the platform or crusher operator's booth, or at least having one readily available, with appropriate instructions as to its use by any employee or serviceman who may have had a need to access the boxes for maintenance, repair, or inspection.

Good Faith Compliance

The record establishes that the respondent took appropriate steps to timely abate the citation by providing a ladder as a safe means of access to the boxes in question. I conclude and find that the respondent demonstrated good faith compliance.

Civil Penalty Assessment

In view of the foregoing findings and conclusions, and taking into account the requirements of section 110(i) of the Act, I conclude and find that the petitioner's proposed civil penalty assessment of \$91 for the violation is reasonable and appropriate. Accordingly, IT IS AFFIRMED.

ORDER

The respondent IS ORDERED to pay a civil penalty assessment in the amount of \$91 for the section 104(a) "S & S" Citation No. 2868984, July 27, 1987, 30 C.F.R. 56.11001.

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Payment is to be made to MSHA within thirty (30) days of the date of this decision, and upon receipt of payment, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge