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SOL (MSHA) V. MARION COUNTY LIMESTONE CO.
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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 88-77-M A.C. No. 13-01953-05504
v.	
MARION COUNTY LIMESTONE COMPANY, LTD., RESPONDENT	Portable Plant No. 1 Mine

DECISION

Appearances: Margaret A. Miller, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for the Petitioner;
James H. Dingeman, President, Marion County Limestone Co., Pella, Iowa, 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). The petitioner seeks a civil penalty assessment of $500 for an alleged violation of mandatory safety standard 30 C.F.R. 56.15005; an assessment of $400 for an alleged violation of safety standard 30 C.F.R. 56.16002(a)(1); and an assessment of $500 for an alleged violation of safety standard 30 C.F.R. 56.3400. All of the alleged violations were cited in a combined section 107(a) Imminent Danger Order and section 104(a) "S & S" Citation No. 3055739, served on the respondent by an MSHA inspector on October 29, 1987.

The respondent filed a timely answer and a hearing was held in Des Moines, Iowa. The parties waived the filing of any written posthearing arguments, and I have considered their oral 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 constitute violations of the cited mandatory safety standards, (2) the appropriate civil penalties to be assessed for the violations, taking into account the statutory civil penalty criteria found in section 110(i) of the Act; and (3) whether the violations were "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. 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, 29 C.F.R. 2700.1 et seq.

Stipulations

The parties stipulated to the following (Joint Exhibit No. 1):

> 1. Respondent is engaged in crushing and selling of limestone in the United States, and its mining operations affect interstate commerce.
>
> 2. Respondent is the owner and operator of the Portable Plant No. 1, MSHA ID. No. L 09154.
>
> 3. Respondent is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. ("the Act").
>
> 4. The Administrative Law Judge has jurisdiction in this matter.
>
> 5. The subject order/citation was properly served by a duly authorized representative of the Secretary upon an agent of the respondent on the date and place stated therein, and may be

admitted into evidence for the purpose of establishing its issuance, and not for the truthfulness or relevancy of any statements asserted therein.

6. The exhibits to be offered by the respondent and the petitioner are stipulated to be authentic but no stipulation is made as to their relevance or the truth of the matters asserted therein.

7. The respondent demonstrated good faith in abating the violations.

8. Respondent is a medium-size mine operator with 13,607 tons of production in 1987.

9. The certified copy of the MSHA Assessed Violations History, marked as Exhibit PÄ1, accurately reflects the history of the mine for the two years prior to the date of the order/citation.

Discussion

The combined section 107(a) Imminent Danger Order and section 104(a) "S & S" Citation No. 3055739, issued on October 29, 1987, by Inspector Dennis A. Heater, states as follows:

The crusher operator was observed standing with one foot on the vibrating jaw crusher with the jaw running. The operator was attempting to break an oversized rock which was lodged in the jaw opening with a sledge hammer. If the operator should slip or lose his balance he could fall into the crusher jaws. The operator was directly above the jaw opening. The opening measured approximately 4 foot wide and could accommodate rocks approximately 2 foot in diameter. The crusher reduced rock to approximately 5 inches diameter. This order is to stop this practice immediately.

The employee did not have the aid of a safety belt or line (56.15005). Loose material on the pan feeder above him could fall and strike the operator while in this area (56.16002, 1) (sic).

> The operator was placing himself in a very bad position (56.3400). This jaw crusher can only be shut down from a lower level. The practice now established, until the feasibility of obtaining a back hoe or secondary breaking hammer can be determined, will be to shut the pan feeder and the jaw crusher down, trim any loose material from the edge of the pan feeder and fill in the jaw crusher opening with this material. The operator will then attempt to break the oversize rock with a sledge hammer or remove it with the aid of a chain and back hoe.

The order/citation was terminated by Inspector Heater on November 10, 1987, and the termination notice states as follows:

> The company has established a written policy along with the verbal policy issued at the time of the order. The written policy explains procedure for working around the jaw crushers not at all while the crusher is in operation. If an object becomes entangled in the jaw crusher, the jaw is to be shut down and then the object is to be removed. Letter attached.

Petitioner's Testimony and Evidence

MSHA Inspector Dennis A. Heater testified as to his experience and training, and he confirmed that he issued the combined imminent danger order and citation during the course of a regular inspection of the respondent's limestone mining operation. He explained the mining and crushing procedures performed at the mine and plant. He confirmed that he issued the order and citation after observing quarry foreman Clint Geery standing on, and straddling the jaw crusher hopper using a sledge hammer to break up a rock which had lodged at the bottom of the hopper at the opening of the jaw crusher. The crusher was in operation, and Mr. Geery had one foot on the vibrating device. The pan feeder, which dumped rock materials into the jaw crusher hopper, was located approximately 3 feet above the hopper opening where Mr. Geery was standing, and the pan feeder was shut down and was not in operation.

Mr. Heater confirmed that Mr. Geery was not wearing a safety belt or line and was not "tied off" while standing over the hopper opening. In view of the fact that the crusher was

in operation and Mr. Geery's foot was resting on the vibrating machine, Mr. Heater was concerned that Mr. Geery would fall into the crusher if he slipped while attempting to break up the rock with the sledge hammer. Mr. Heater was also concerned that the unconsolidated rock materials in the pan feeder could have moved and struck Mr. Gerry, knocking him into the crusher opening over which he was standing.

Mr. Heater believed that it was highly likely that a fatal accident would have occurred had Mr. Geery continued the practice of attempting to break up or free the rock while standing in such a precarious position. Mr. Heater stated that in order to preclude distracting Mr. Geery, he did not yell at him to come down. He simply placed his hand on Mr. Geery's shoulder and moved him back and away from his position on the crusher hopper.

Mr. Heater confirmed that he discussed the matter with Mr. Geery, and that Mr. Geery informed him that he was attempting to break up the rock because it would not feed through the crusher, and that the method he was using was the only available practical method without shutting down the crusher and causing delays in production. Mr. Geery admitted that he had on previous occasions used the same method in attempting to break up rocks which became lodged in the jaw crusher opening.

Mr. Heater confirmed that he issued the imminent danger order in order to prevent Mr. Geery from continuing the practice of standing on an operating crusher opening while attempting to break up or free rock which was stuck over the jaw crushing opening without wearing a safety belt or being tied off to prevent him from falling into the jaw crusher opening located approximately 4 to 5 feet below where Mr. Geery was standing.

Mr. Heater stated that he cited the respondent with a violation of section 56.15005, because Mr. Geery was not wearing a safety belt or line and was not otherwise tied off to prevent him from falling into the crusher. Mr. Heater believed that it was highly likely that Mr. Geery could have slipped and fallen into the running and vibrating crusher because he was not tied off or wearing a safety belt.

Mr. Heater stated that he cited the respondent with a violation of section 56.16002(a)(1), because the unconsolidated rock materials which were on the pan feeder presented a hazard to Mr. Geery at the location where he was standing over the crusher hopper. In the event a truck driver inadvertently

dumped a load of rock onto the pan feeder while Mr. Geery was attempting to dislodge the rock in the crusher, the material on the pan feeder could have moved and dropped into the crusher striking Mr. Geery or knocking him into the crusher. Mr. Heater believed that Mr. Geery was exposed to the hazard of caving or sliding materials from the pan feeder, and that his exposure to this hazard while he was standing on the crusher while it was running would reasonably likely result in serious injury or death if he were to fall in the crusher. Mr. Heater confirmed that if Mr. Geery had fallen into the operating crusher, he would be unable to get out, and that the cut-off switch was in an area below the crusher and not readily accessible.

Mr. Heater stated that he cited the respondent with a violation of section 56.3400, because Mr. Geery placed himself in a hazardous position while attempting to perform secondary breakage of the rock with a sledge hammer. Mr. Heater believed that it was highly likely that an accident would have occurred and that Mr. Geery would have suffered fatal injuries had he continued the practice. Mr. Heater agreed that no one other than Mr. Geery was exposed to any hazard or injury because of the practice in question.

Mr. Heater confirmed that he discussed the order and citations with the respondent's president James Dingeman at the time of his inspection, and that Mr. Dingeman agreed that Mr. Geery should not have attempted to break or dislodge the rock while standing on the operating crusher. Mr. Dingeman immediately issued verbal instructions to Mr. Geery not to repeat the practice, and he subsequently issued a written notice to all employees instructing them not to stand on top of the crusher while it was in operation, and to shut it down before attempting to remove any material entangled in the crusher. Mr. Heater also confirmed that he had no reason or information to believe that Mr. Dingeman was aware of the fact that Mr. Geery had engaged in the practice in question. Mr. Heater also stated that he considered Mr. Dingeman to be a conscientious mine operator who was concerned for safety (Tr. 7Ä35).

On cross-examination, Mr. Heater stated that the materials in the pan feeder were approximately 3 feet above, and 4 feet away from where Mr. Geery was standing on the crusher. Mr. Heater agreed that any material falling from the pan feeder would not likely cause fatal injuries to Mr. Geery if they struck him, and that they were only a contributing factor to the hazard presented.

Mr. Heater confirmed that although Mr. Dingeman had previously engaged in the sand and gravel business, his limestone operation was relatively new and that he had only been in this business for approximately 3 years (Tr. 35Ä47).

Respondent's Testimony and Evidence

James H. Dingeman, respondent's president, confirmed that he does not dispute the fact that Mr. Geery placed himself in a hazardous position on the crusher as described by Inspector Heater. Mr. Dingeman also confirmed that he does not dispute the fact that the violations occurred as stated in the order/citation issued by Mr. Heater. Mr. Dingeman asserted that he filed his contest because of his belief that the proposed civil penalty assessments were excessive, and his belief that while it was possible that Mr. Geery could have fallen into the crusher hopper, it was not highly likely that he would have fallen into the crusher jaws because they were blocked by the large rock which was lodged at the bottom of the cone-shaped hopper.

Mr. Dingeman asserted that he is concerned about the safety of his employees and has always attempted to operate an accident-free mining operation. He confirmed that he had previously installed a chain across the crusher entrance location to prevent employees from inadvertently walking or falling into the crusher, and that prior to the issuance of the order and citation, he believed that breaking or dislodging rocks from a crusher with a sledge hammer was an acceptable industry-wide practice. He had never received any information that such a practice had ever resulted in accidents or injuries.

Mr. Dingeman stated that in order to gain access to the crusher, Mr. Geery apparently unhooked the chain which guarded that location in order to position himself on the crusher. In addition to issuing his written work policy instructions requiring the shutting down of the crusher before any attempts are made to break or dislodge rocks, Mr. Dingeman stated that he relocated the crusher shut-down switch closer to the crusher so that it would be readily accessible to all employees performing this work. These corrective actions were taken by Mr. Dingeman after the violations were issued (Tr. 47Ä52).

Findings and Conclusions

The respondent does not dispute the fact that the three violations occurred as stated by the inspector in the contested order/citation which was issued in this case. I take note of

the fact that all of the violations were the result of the inspector's observations of quarry foreman Clint Geery placing himself in a precarious and hazardous position on a vibrating hopper of a jaw crusher while it was in operation. Mr. Geery was attempting to break up or dislodge a large rock which had lodged in the jaw crusher opening, and he was not wearing a safety belt or otherwise tied off with a safety line to prevent him from falling into the crusher. The inspector concluded that in the circumstances, the foreman was in danger of falling into the crusher.

30 C.F.R. 56.15005, provides as follows:

Safety belts and lines.

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

30 C.F.R. 56.16002(a)(1), provides as follows:

Bins, hoppers, silos, tanks, and surge piles.

> (a) Bins, hoppers, silos, tanks, and surge piles, where loose unconsolidated materials are stored, handled or transferred shall be -- (1) equipped with mechanical devices or other effective means of handling materials so that during normal operations persons are not required to enter or work where they are exposed to entrapment by the caving or sliding of materials.

30 C.F.R. 56.3400, provides as follows:

Secondary breakage.

> Prior to secondary breakage operations, material to be broken, other than hanging material, shall be positioned or blocked to prevent movement which would endanger persons in the work area. Secondary breakage shall be performed from a location which would not expose persons to danger.

In the answer filed in this case, Mr. Dingeman asserts that the foreman in question was a knowledgeable individual

with many years of accident-free quarrying experience, and that "if he was highly likely to fall into the crusher he would have known that" and "would not put himself in jeopardy." Although the quarry foreman did not testify in this case, I find no reason for discounting Mr. Dingeman's assessment of his work skills. However, the Commission has previously considered and rejected such an argument in at least two cases dealing with the same safety belt and safety line standard which was cited in this case. See: KerrÄMcGee Corp., 3 FMSHRC 2496, 2497 (November 1981); Great Western Electric Company, 5 FMSHRC 840 (May 1983).

In the Great Western Electric Company case, the Commission stated as follows at 5 FMSHRC 842:

> Great Western argues that the skill of a miner is a relevant factor in determining whether there is a danger of falling because the miner's skill defines the scope of the hazard presented. We find that such a subjective approach ignores the inherent vagaries of human behavior. Even a skilled employee may suffer a lapse of attentiveness, either from fatigue or environmental distractions, which could result in a fall. The specific purpose of 30 C.F.R. 57.15Ä5 is the prevention of dangerous falls. KerrÄMcGee Corp., 3 FMSHRC 2496, 2497 (November 1981). By adopting an objective interpretation of the standard and requiring a positive means of protection whenever a danger of falling exists, even a skilled miner is protected from injury. We believe that this approach reflects the proper interpretation and application of this safety standard.
>
> That is not to say that the miner's skill is totally immaterial. The skill of a miner may be a relevant factor in determining an appropriate civil penalty for a violation. In making work assignments and giving instructions to its employees, the amount of reliance which an operator places on the relative skills of its employees may be an indication of the operator's negligence concerning the violation. A miner's skill may also influence the probability of the occurrence of the event against which a standard is directed, and so affect that element of gravity.

It is well-settled that under the Act, an operator is liable without fault for violations of any mandatory standards committed by its employees. See: Allied Products Co. v. FMSHRC, 666 F.2d 809 (5th Cir.1982); American Materials Corp., 4 FMSHRC 415 (March 1982); KerrÄMcGee Corp., 3 FMSHRC 2496 (November 1981); El Paso Rock Quarries, Inc., 3 FMSHRC 35 (January 1981); Ace Drilling Company, 4 FMSHRC (April 1980).

In addition to the respondent's candid admissions that each of the violations occurred as stated in the order/citation issued by the inspector in this case, I conclude and find that the testimony and evidence adduced by the petitioner supports and establishes each of the violations in question. I agree with the inspector's conclusion that the position of the foreman on the vibrating and operating crusher hopper without the use of a safety belt or line exposed him to a hazard of falling into the machine. I also agree with the inspector's conclusion that by positioning himself in such a manner on the crusher hopper, the foreman exposed himself to possible entrapment by the caving or sliding of rock materials from the pan feeder, and that by performing secondary breakage by means of a sledge hammer from a hazardous position without being secured from a fall, the foreman exposed himself to danger. Under all of these circumstances, the violations, and the combined order/citation issued by the inspector ARE AFFIRMED.

Significant and Substantial Violations

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 the violation of 30 C.F.R. 56.15005, I conclude and find that the foreman's unsecured position on the vibrating and operating crusher presented a danger of his falling into the crusher. In the event of a fall, I believe it would be reasonably likely that the foreman would have suffered injuries of a reasonably serious nature. I agree with the inspector's "significant and substantial" finding, and IT IS AFFIRMED.

With regard to the violation of 30 C.F.R. 56.16002(a)(1), I agree with the inspector's "significant and substantial" finding. By placing himself in a hazardous position on the crusher hopper in question, the foreman exposed himself to injury from moving or falling rock materials from the pan feeder. Although

it is possible that any materials moving or falling from the pan feeder may not in and of themselves have inflicted fatal injuries, I believe one may reasonably conclude that such a fall or movement of materials could have contributed to the hazard presented. Any sudden or unexpected movement or fall of these materials could have knocked the foreman into the crusher hopper from his unsecured position, and if this occurred, the weight of the materials would likely have trapped the foreman inside the moving crusher hopper and prevented his timely exit. For all of these reasons, I also agree with the inspector's "significant and substantial" finding with respect to the violation of 30 C.F.R. 56.3400. Accordingly, the inspector's "S & S" findings as to both of these violations ARE AFFIRMED.

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

The parties stipulated that the respondent is a medium size mine operator, and that the 1987 annual production for the mine was 13,607 tons of limestone. Mr. Dingeman stated that he employs five people, and notwithstanding the stipulation, he believes that his mining operation is a relatively small one. I agree, and I conclude and find that the evidence here supports a conclusion that the respondent is a small mine operator.

Mr. Dingeman stated that while the payment of the proposed civil penalty assessments will not put him out of business, he is concerned about the amount of the penalty, particularly since the three separate violations which were "specially assessed" by MSHA were the result of only one incident involving Mr. Geery's attempts to break or dislodge the rock from the crusher while not wearing a safety belt or otherwise securing or protecting himself from a fall into the vibrating and operating machine. I conclude and find that the penalties assessed by me will not adversely affect the respondent's ability to continue in business.

Good Faith Compliance

The parties stipulated that the respondent demonstrated good faith in abating the violations. The record establishes that the violations were immediately abated when the inspector removed Mr. Geery from his location on the crusher. Further, as soon as Mr. Dingeman was informed of the practice, he immediately verbally instructed Mr. Geery not to repeat the practice, and subsequently issued written instructions to all of his employees as to the safe procedures to be followed in

the future, and moved the stop-start switch closer to the location of the crusher. Under the circumstances, I conclude and find that the respondent exercised rapid good faith compliance in abating the violative practice and conditions in question, and I have taken this into consideration in this case.

History of Prior Violations

An MSHA computer print-out of the respondent's prior history of violations reflects that the respondent has received no citations or assessed violations prior to February 19, 1987. The information presented reflects that for the period February 19, 1987 to October 28, 1987, the respondent was assessed for five violations for which it paid civil penalty assessments totalling $110. None of these violations involved any of the mandatory standards cited in this case. Under the circumstances, I conclude that the respondent has a good compliance record, and I have taken this into consideration in this case. I have also taken into consideration the inspector's testimony that the respondent is a conscientious and safety-conscious mine operator.

Gravity

On the basis of the unrebutted testimony of the inspector, and including my "significant and substantial" findings and conclusions, I conclude and find that all of the violations which have been affirmed in this case were serious.

Negligence

The evidence in this case establishes that the violations were the direct result of the conduct of the quarry foreman who jeopardized only his own safety by placing himself in a hazardous position on the crusher hopper while it was in operation. The inspector's unrebutted testimony reflects that the foreman admitted that he had engaged in this practice over a period of 2 years. The inspector was of the opinion that Mr. Dingeman, as the operator and owner of the quarry, was a conscientious and safety conscious mine operator, and there is no evidence that he had ever observed the foreman on an operating crusher, or that he had any knowledge of the apparent practice engaged in by the foreman.

Although Mr. Dingeman characterized the foreman as "intelligent, knowledgeable, and experienced," I have difficulty understanding why such an individual would place himself in such a precarious position on an operating crusher hopper without securing himself from a possible fall into the machine.

Mr. Dingeman testified that he had previously installed a chain across the crusher access to preclude individuals from inadvertently walking into or falling into the crusher, and that the foreman apparently unhooked the chain guarding the crusher location in order to position himself over it while attempting to dislodge the large rock with a sledge hammer. Although Mr. Dingeman believed that the breaking or dislodging of a rock with a hammer was an acceptable industry-wide practice, and that he never received any information that such a practice had ever resulted in accidents or injuries, I find great difficulty in accepting any notion that engaging in such a practice while the crusher is in operation without the benefit of a safety belt or line is acceptable, or the industry norm.

The record and pleadings in this case reflect that Inspector Heater made a finding of "high negligence" with respect to the violation of section 56.15005, and that similar negligence findings were made with respect to the violations of sections 56.16002(a)(1) and 56.3400 when the order/citation was subsequently modified by another inspector. Based on the evidence and testimony adduced at the hearing, I concur in those findings.

I conclude and find that an experienced and knowledgeable mine foreman should have recognized the fact that he was placing himself in a precarious position by attempting to break or dislodge a rock from an operating jaw crusher without first shutting down the machine or securing himself with a safety belt or line. Insofar as the foreman's conduct is concerned, I conclude and find that it clearly supports a finding of "high negligence" with respect to each of the violations which are a direct result of his action in placing himself in such a hazardous position.

It is well settled that the negligence of a mine foreman may be imputed to the operator. See: Southern Ohio Coal Company, 3 FMSHRC 1459 (August 1982); Nacco Mining Co., 3 FMSHRC 848 (April 1981). However, on the facts of this case, the evidence establishes that Mr. Dingeman had not previously observed the foreman on an operating crusher and had no knowledge of the practice admitted to by the foreman. Further, the evidence establishes that Mr. Dingeman had previously taken steps to prevent anyone from inadvertently walking or falling into the crusher by installing a chain across the access to the crusher, and the inspector believed that Mr. Dingeman was a conscientious and safety-minded-mine operator. Under these circumstances, I believe it is appropriate

in this case to take these factors in consideration in mitigating any civil penalties which should be assessed against the respondent for the violations in question. See; Allied Products Company v. FMSHRC, supra; Nacco Mining Co., 3 FMSHRC 848, 850 (April 1981); Marshfield Sand & Gravel, Inc., 2 FMSHRC 1391 (June 1980); Old Dominion Power Co., 6 FMSHRC 1886 (August 1981). I have also considered the fact that the three violations which have been affirmed as separate violations of each of the cited mandatory standards, are interrelated and arose out of one single act of the foreman.

Civil Penalty Assessments

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

Order/Citation No.	Date	30 C.F.R. Section	Assessment
3055739	10/29/87	56.15005	$350
3055739	10/29/87	56.16002(a)(1)	$175
3055739	10/29/87	56.3400	$200

ORDER

The respondent IS ORDERED to pay civil penalty assessments in the amounts shown above within thirty (30) days of the date of this decision. Upon receipt of payment by the petitioner, this matter is dismissed.

George A. Koutras
Administrative Law Judge