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SOL (MSHA) V. EVANSVILLE MATERIALS  
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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. LAKE 89-61-M  
A.C. No. 12-01389-05503

v.

Rockport Plant

EVANSVILLE MATERIALS, INC.,  
RESPONDENT

DECISION

Appearances: Rafael Alvarez, Esq., Office of the Solicitor,  
U.S. Department of Labor, Chicago, Illinois, for  
the Petitioner;  
Gene Hurm, Safety Director, Evansville Materials,  
Inc., Evansville, Indiana, for the Respondent.

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding 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 a civil penalty assessment in the amount of \$58, for an alleged violation of mandatory safety standard 30 C.F.R. 56.11001. The respondent filed a timely answer denying the violation, and a hearing was held in Evansville, Indiana. The parties waived the filing of posthearing briefs, but I have considered their oral arguments made on the record during the hearing in my adjudication of this matter.

Issues

The issues presented in this proceeding are (1) whether the respondent has violated the standard as alleged in the proposal for assessment of civil penalty, (2) the appropriate civil penalty that should be assessed against the respondent for the alleged violation based upon the criteria set forth in section 110(a) of the Act, and (3) whether the violation was "significant and substantial."

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#### 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, 20 C.F.R. 2700.1 et seq.

#### Stipulations

The parties stipulated to the following (Tr. 4-5):

1. The Commission and presiding judge have jurisdiction in this matter.
2. The respondent's sand and gravel business affects commerce.
3. The respondent is a sand and gravel operator engaged in the business of dredging sand and gravel from the Ohio River.
4. The respondent's operation is located in Tell City, Indiana, and its plant is known as the Rockport Plant No. 6.
5. The respondent's Rockport Plant worked 45,941 manhours during the period March 9, 1987 through March 9, 1988.
6. The respondent worked 400,223 manhours at all of the mines which it operates during the period March 9, 1987 through March 9, 1988.
7. In the event the violation is established, the proposed \$58 civil penalty assessment will not adversely affect the respondent's ability to continue in business.
8. The parties agree to the admissibility of copies of the citation, extension, and termination, and the computer print-out reflecting the respondent's history of prior violations (exhibits P-1, P-2).

#### Discussion

The contested section 104(a) S&S Citation No. 3260305, was issued by MSHA Inspector George Lalumondiere on October 4, 1988, and he cited an alleged violation of mandatory safety standard 30 C.F.R. 56.11001. The cited condition or practice states as follows:

Safe access was not provided between the dredge work boat and the dredge. In order to enter or exit from the work boat to the dredge, a step up of about three feet was necessary with nothing available for a hand hold. This area is traveled on a daily basis.

#### Petitioner's Testimony and Evidence

MSHA Inspector George Lalumomdiere testified that he visited the respondent's dredging operation on the day in question and was taken to the dredge located in the middle of the Ohio River on a small flat bottom "john boat" approximately 12 feet long powered by a small motor. Mr. Gene Hurm, the respondent's safety director, was with him in the boat along with another employee who was operating the boat. He described the dredge as approximately 100 feet long, and confirmed that it is used to pump sand and gravel from the bottom of the river. Upon arriving at the dredge, the boat operator tied the boat up to the dredge timberheads which he identified from photographs as "two yellow posts sticking up on the edge of the dredge." He estimated that the deck of the dredge was 3 feet above the boat (Tr. 9-12).

The inspector stated that in order to get out of the boat he had to place his hand up on the deck of the dredge and pull himself out of the boat, and since it was a sunny day, the steel deck plate was "hot to the touch" as he grabbed the deck to pull himself up and onto the dredge. Although the photographs include some hand-holds or "D-rings" on the deck dredge, the inspector stated that they were not installed at the time of his inspection and he had to slide onto the slick deck in order to get out of the boat (Tr. 13-14).

The inspector stated that in the absence of any hand-holds, or some other means of getting out of the boat, one could slip and fall into the water while trying to get out of the boat and could possibly strike their head on the boat, particularly on a windy day. He stated that only the front end of the boat was tied to the post, and while this may prevent the boat from sliding out from under him, he still had to slide himself up onto the hot deck. Other than the hot deck, and the possibility of sliding off, since he is "agile and can get around," he had no problem getting out of the boat (Tr. 15).

The inspector confirmed that he cited a violation of section 56.11001, because he did not believe that there was a safe means of access for getting out of the boat onto the dredge. He believed that hand-holds would be "safer than having nothing at all" because someone would have something to hold onto without having to reach up to a hot deck and pull himself out of the boat. He did not consider the hand-holds to be tripping hazards, and he would probably consider the cavils to be adequate as a

safe means of access, but only if they were longer and closer to the boat shown in the photograph. He confirmed that another inspector abated the citation (Tr. 16-17).

The inspector believed that the lack of safe access from the boat onto the dredge presented a hazard, and that it was reasonably likely that anyone leaving the boat by reaching up and grabbing the deck with nothing else to hold onto could slip and fall and receive lost day or work injuries. He believed that it was reasonably likely that someone would receive face or head injuries, or be knocked unconscious if he struck his head in a fall, and even though he would be wearing a life jacket "there's still no guarantee that he'd come out a hundred percent safe" (Tr. 18). He believed that the violation was significant and substantial, and that the negligence was moderate because the safety director travels the area at least once a month and should have been aware of the condition. The citation was abated by providing hand-holds for persons to hold onto while leaving the boat (Tr. 19).

On cross-examination, the inspector confirmed that when he issued the citation he suggested that the respondent install a chain ladder to provide a means of access from the boat to the dredge, and that when he returned to see if the abatement had been completed, he suggested the installation of "A-frame" handles which were something different from the D-rings. He also confirmed that during his inspection visit, the boat was tied off to the timberhead with a rope, but he did not believe that the people in the boat could get out by using the rope because the boat operator was standing at the front end where the boat was tied off steadying the boat (Tr. 23-27). The inspector further confirmed that no one got out of the boat at the front by using the rope, and that everyone got out by putting their hands on the deck and sliding on to it. The person holding the boat steady by the rope also got out the same way (Tr. 32). The inspector confirmed that the use of a rope was better than nothing, but he did not consider the rope to be a safe means of access from the boat to the dredge because he believed there was a better way to provide a safe means of access (Tr. 33).

In response to further questions, the inspector confirmed that he had never worked on a boat or a dredge, but that he has inspected many similar dredging operations. These operations provide a chain ladder with a hand-hold which is dropped over the side of the dredge so that anyone getting out of the boat can step up the ladder and have something to hold onto and step off of (Tr. 36). The inspector confirmed that only the front end of the boat was tied up, and that given the fact that the deck was hot, and the back of the boat was not tied off, in the event of any drifting, the person attempting to get out of the boat would have no means of holding on, and there would be no safe means of access from the boat onto the dredge (Tr. 41). He also confirmed

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that there were three persons in the boat on the day of the inspection, and that when there is a crew change, more than one person is in the boat. Normally, when there are no crew changes, only one man is in the boat (Tr. 41).

Referring to the photographs which were submitted by the respondent as part of its answer in this case, the inspector confirmed that the hand-holds shown in the photographs were welded to the dredge by the respondent to abate the citation, and if they were in place when he conducted his inspection, he would not have issued a citation because "they'd had something to hold onto besides the rope" (Tr. 42). It was his understanding that the boat would normally be tied up at the yellow posts shown in the photographs, and that the posts are also used to tie up any barges that are loaded from the dredge (Tr. 43-44). The inspector confirmed that he did not measure the distance between the top of the boat and the deck of the dredge, but estimated it to be 3 feet or "waist high" (Tr. 44).

#### Respondent's Testimony and Evidence

Neil Mulzer, respondent's president, testified that he believed that the timberheads and cavils which were installed on the dredge, as shown in the photographs, may be used as hand-holds. He stated that when there is a current in the river, only the front end of the boat is tied up because the current keeps the back of the boat against the dredge. In the event of a lack of any current, the back of the boat is also tied up to the dredge to keep it from colliding with any barges which may be loading (Tr. 47). He did not believe that the hand-holds which were welded on for abatement were as good as the timberheads or cavils because the timberheads are 18 inches high, and the cavils are 10 inches high, and provide better hand-holds (Tr. 48). He conceded that the boat shown in the photographs is some distance from the cavil, but that the boat could be tied up there, and in order for the cavil to function as a hand-hold, the boat would have to be docked close to it (Tr. 49, exhibit R-10). Mr. Mulzer confirmed that the cavil is an integral part of the dredge, and it is used to tie up the boat (Tr. 50).

Mr. Mulzer believed that the timberhead and rope used to tie up the boat are sufficient to provide a means of access from the boat to the dredge because the timberhead is high enough to allow anyone to pull themselves out of the boat using the rope. He demonstrated the difficulty one would have in grabbing the hand-holds and placing their feet up onto the dredge deck (Tr. 53). He believed it was easier for someone to hold onto the timberhead while stepping up and out of the boat (Tr. 54). He confirmed that the hand-holds shown in the photographs were not installed on the dredge at the time the citation was issued (Tr. 57). He also confirmed that photographic exhibit R-10 is not the same dredge cited by the inspector, but that exhibits R-2 through

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R-9 are photographs of the cited dredge (Tr. 60). He stated that he has been in the dredging business since 1963, and has visited many dredges, but has never seen anything other than a cavil or timberhead and a rope used to get in and out of boats (Tr. 61).

On cross-examination, Mr. Mulzer stated that the boat in question is usually tied up at a "notch" in the dredge in order to keep it from swinging out and being struck by any barges being loaded. He conceded that the boat shown in photographic exhibits R-8 and R-9, is not tied on both ends, and he guessed that the prevailing current could not hold the untied rear end of the boat against the dredge. He conceded that the back end of the boat might come out, and that someone could lose their balance even if they were to use the hand-holds (Tr. 64).

Mr. Mulzer stated that the metal dredge deck could get hot in the summer, but that it would not be "searing hot" and would not "blister your hands." He believed that the hand-holds would be equally as hot to the touch (Tr. 67). Mr. Mulzer confirmed that there is no standard company procedure or safety rule in effect instructing employees as to how to get in and out of the boat while it is at the dredge. He stated that the rope and timberhead "is there for them to use," and "we didn't sit and watch everybody as they got out of the boat" (Tr. 67). He confirmed that the use of the rope and timberhead was discretionary with each employee, and that "you can't watch everybody" (Tr. 68). He confirmed that he was not with the inspector during the inspection and did not discuss the citation with him prior to the hearing (Tr. 68). Mr. Mulzer stated that prior to the issuance of the contested citation, other MSHA inspectors have inspected the dredge and never required any D-rings. He "guessed" that these inspectors used the rope tied around the timberhead to get out of the boat (Tr. 72).

Gene Hurm, respondent's safety director, was of the opinion that the hand-holds presented a tripping hazard, and MSHA's counsel alluded to a telephone conference during which Mr. Hurm raised this question (Tr. 22). Mr. Hurm took the position that the cavils, timberheads, and the rope could all be used for access from the boat to the dredge, and that the inspector could have gone to the front of the boat and used the rope to get out of the boat. He believed that anyone leaving the boat had an option to use the rope or "crawl up the sides," and that the hand-holds are not needed (Tr. 26).

Mr. Hurm testified that the cavils and timberheads have been in place on the dredge since it was new. He confirmed that he was under the impression from the inspector that the cavils and timberheads were insufficient to abate the citation, and that a ladder would have to be installed over the side of the dredge to abate the citation. He stated that had he known that hand-holds welded to the dredge deck would have been adequate to abate the

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citation, this case "would never have gotten this far" and that he "would have said something right away" to the inspector (Tr. 69). He confirmed that MSHA Inspector Gene Upton suggested the hand-holds, and that Mr. Upton terminated the citation. Mr. Hurm could not recall anyone suggesting the use of a "roll-up chain ladder" (Tr. 70). He recalled discussing the use of the rope with the inspector, but could not recall exactly what was said (Tr. 73). He confirmed that there are no written instructions for the employees to follow, and that they normally leave the boat from the front end after tying it up by holding on to the timberhead, grabbing the rope, and just jumping off the boat (Tr. 74). He explained that "it's just one of those things that's overlooked . . . and you can't make a policy on getting out of a boat" (Tr. 75).

Inspector Lalumomdiere was recalled by the court, and in response to further questions, stated as follows (Tr. 75-77):

BY THE COURT: I want to ask you this, you saw that little demonstration Mr. Mulzer gave us about putting the hand-hold there and if you grab it and you put your foot up, you're kind of in an awkward position there, do you lend any credence to that.

A. I didn't really figure on getting off the boat that way. I figured if there was a hand-hold there or you've got something to hold onto so you can swing your leg up over the side of the boat and then come up partially in a kneeling position and then straighten on up after you get up on the deck.

BY THE COURT: So I take it, your concern was that an employee that got off in the middle of the boat or the back of the boat with it not being tied off or nothing to hold onto to, there was a possibility of reasonable likelihood that if you try to get off there he'll probably fall and knock his head or fall in the water.

A. I felt there was a chance of it.

BY THE COURT: Now, what if the boat was secured at the both ends on the day you were there, the back end was tied snugly to the dredge and the front end was tied snugly to the dredge and you saw the first guy get off, grab that yellow telephone pole contraption there, used the rope to get off, and then the second guy did it and then the third guy did it . . .

A. If this was the customary way of getting off . . .

BY THE COURT: Right.



A. . . . and I directed you here, this is the way we get off . . .

BY THE COURT: Right.

A. . . . and you've got something to hold onto, I would have probably accepted it as a safe way to get off because you'd also be stepping up on the bow of the board which would put you up another foot closer to the dredge. And with no way of the boat slipping out from under you or anything, got something to hold onto to steady yourself, I would say, you know, probably I would have accepted it as safe and would probably never issued a citation.

BY THE COURT: But on the day that you were there at the time that this happened, it's just that the circumstances of what happened, the back end wasn't tied and you had to get off at the middle and the deck was hot and it was slippery, you had to kind of shinney your way up, you came to the conclusion that this was the way they normally do it, right.

A. Right, because the guy that was operating the boat went off the same way we did.

BY THE COURT: Well, I mean, the operator's been very candid with me, he more or less admitted that he lets the employee decide how to get off the boat.

A. Right.

The inspector denied that he had required the respondent to install a ladder, but confirmed that he "suggested" that a chain ladder could be installed "where you could stand up on the edge of the deck and then drop it down when you get ready to get off the boat and you would at least have something to step off onto" (Tr. 78). Referring to photographic exhibits R-8 and R-9, the inspector confirmed that if the boat had been tied up at both ends, and the individual shown in the photographs had stepped out of the boat and onto the dredge in the manner depicted in the photographs, he would not have issued the citation and "probably would not have given it that much thought" (Tr. 78-79).

Mr. Mulzer pointed out that anyone leaving the boat from the bow or the middle would be approximately a foot higher in the boat because they could stand on the seats or the bow structure which is elevated above the bottom of the boat (Tr. 79). He further stated that his employee do not like the hand-holds because of the difficulty in using them (Tr. 80).

Findings and Conclusions

Fact of Violation

The respondent is charged with a violation of mandatory safety standard 30 C.F.R. 56.11001, for failing to provide a safe means of access for employees to get out of the work boat which is used as a means of access to the dredge. Section 56.11001, provides as follows: "Safe means of access shall be provided and maintained to all working places."

The evidence establishes that the dredge is a working place where employees are required to be in order to perform certain duties in connection with the respondent's dredging operations. The inspector issued the citation when he and the two other individuals who were in the boat at the time of his inspection visit to the dredge got out of the boat by simply placing their hands on the deck of dredge and "sliding" out of the boat and onto the deck. The dredge deck was approximately 3 feet above the boat, and there were no hand-holds available for anyone to hold onto. Only the front end of the boat was tied to a post located on the dredge deck, and the steel deck plating was "hot to the touch" as the inspector placed his hands on the deck. Although there was a rope tied to the post, and the inspector understood that the boat is normally tied up at that post, and believed that the rope "was better than nothing," he did not consider the use of the rope to be a safe means of access to the dredge deck because he believed that there was "a better way" to provide such an access. His subsequent suggestion that a ladder be installed as a means of access from the boat to the dredge was not adopted because it was impractical, and another MSHA inspector abated the citation after the respondent welded hand-holds to the deck of the dredge.

The respondent does not dispute the lack of any hand-holds of the type which were installed to abate the citation. It takes the position that the cavils and/or the timberhead or post which was provided with a rope, provided an adequate means for safe access from the boat to the deck of the dredge, and that the hand-holds which were installed were impractical in that one had to contort his body after grabbing the hand-holds in order to get out of the boat, and that the use of the hand-holds would place the person in a rather precarious position while attempting to get out of the boat while holding on to the hand-holds. The respondent further asserted that the use of the rope tied to the post provided an adequate means of access from the boat onto the deck dredge.

Having observed the courtroom demonstration of the use of the hand-holds by Mr. Mulzer, I find some merit in his assertion that it would be difficult for anyone holding on to these hand-holds to climb up and on the deck of the dredge from the

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boat. However, after viewing the photographic exhibits which show the hand-holds welded into position in close proximity to the timberhead where the boat would be tied up, I cannot conclude that one would have as much difficulty using the hand-hold in conjunction with the timberhead as a safe means of access from the boat.

With regard to the use of the timberhead and rope as a safe means of access from the boat, the facts in this case establish that the inspector and the other two individuals in the boat at the time of the inspection did not use the timberhead and rope while leaving the boat. They simply placed their hands on the deck and slid their bodies up and onto the deck. The inspector obviously believed that this procedure was the normal method used by employees to get out of the boat, and in the absence of anything to the contrary, I cannot conclude that the inspector's belief that a safe means of access was not provided was unreasonable, and I agree with it. With regard to the use of the cavils as a means of access from the boat, the facts here show that the boat was not tied up to any cavil, and that a cavil would only present a possible means of access if the boat were docked in close proximity to the cavil, and it was within reach of the person on the boat.

Further support for the inspector's belief that the normal method of leaving the boat was the method used by the inspector and the other two individuals in the boat at the time of the inspection may be found in the admissions by Mr. Mulzer and Mr. Hurm that the respondent had no established procedure or safety rule for the employees to follow when getting out of the boat. Although Mr. Hurm suggested that an employee leaving the boat would normally hold onto the timberhead and rope and simply "jump off the boat," he did not use the rope or timberhead when he was with the inspector, and I find no credible evidence to support any conclusion that the use of the rope and timberhead was an established procedure to be followed by all employees while getting out of the boat.

Although Mr. Mulzer suggested that the boat is normally tied up at a "notch" in the dredge, I find no credible evidence to support any conclusion that the respondent had any established fixed location for the boat to be tied up to the dredge, or that it had any safety procedures in place for the employees to follow while getting out of the boat at only one location alongside the dredge. Although the use of the existing cavils and timberheads, in conjunction with ropes may have provided a safe means of access, I am not convinced that the respondent had any clearly defined procedures instructing its employees to use these devices as a safe means of access. If it had, the respondent may not have been cited. Indeed, the inspector agreed that if there were an established and customary method of getting out of the boat while it was securely tied to the dredge, and the employees were

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so instructed, he would have accepted the use of the timberheads and ropes as a safe means of access. On the facts of this case, it would appear to me that the tying up of the boat at the dredge and the use of any of the available devices as a means of access from the boat did not follow any established procedure or practice, and that each employee was left on his own. Under all of these circumstances, I conclude and find that the evidence establishes that no safe means of access was provided as charged by the inspector, and that a violation of section 56.11001, has been established. The citation is therefore 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, 3-4 (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).

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); Youghiogeny & Ohio Coal Company, 9 FMSHRC 2007 (December 1987).

The inspector's unrebutted credible testimony establishes that the failure by the respondent to provide a safe means of access for persons leaving the boat presented a potential slip and fall hazard and that in the absence of a readily available hand-hold for one to hold onto or steady himself while he is leaving the boat presented a reasonable likelihood of an accident, particularly in a situation where the boat may not be secured to the dredge at both ends, or on a rainy or hot day when the deck may be hot or slippery. Although one would expect that anyone in the boat would be wearing a life jacket, if he were to fall or slip while attempting to get out of the boat, he could strike his head on the boat or the side of the dredge, and if he were knocked unconscious, and landed face down into the water, the life jacket may not prevent him from drowning. I conclude and find that in the normal course of business, if a person working alone in the boat were to slip or fall while attempting to get out of the boat with no readily available safe means of access onto the dredge, and were to strike his head, he would likely sustain injuries of a reasonably serious nature. Accordingly, the inspector's "S&S" finding IS AFFIRMED.

#### History of Prior Violations

A computer print-out of the respondent's history of prior violations reflects that the respondent paid civil penalty assessments in the amount of \$90, for two section 104(a) "S&S" citations issued during the period March 9, 1987, through March 8, 1989. I conclude and find that the respondent has a good compliance record, and I have taken this into consideration in the assessment of the civil penalty in this case.

#### Good Faith Compliance

The record establishes that the abatement time was extended to allow the respondent more time to install suitable hand-holds to abate the violation. It also establishes that the violation was ultimately abated by the respondent in good faith within the time allowed by the inspector.

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#### Negligence

The inspector's finding of "moderate negligence" is affirmed, and I conclude and find that the violation resulted from the respondent's failure to exercise reasonable care.

#### Gravity

For the reasons stated in my "S&S" findings, I conclude and find that the violation was serious.

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

I conclude and find that the respondent is a medium-size sand and gravel operator, and that its dredging operations at the Rockport Plant where the violation occurred was a small operation. I further conclude and find that the civil penalty assessment which I have made for the violation in question will not adversely affect the respondent's ability to continue in business.

#### Civil Penalty Assessment

On the basis 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 \$58 is reasonable and appropriate for the violation which has been affirmed.

#### ORDER

The respondent IS ORDERED to pay a civil penalty assessment in the amount of \$58, for a violation of mandatory safety standard 30 C.F.R. 56.11001, as stated in the section 104(a) "S&S" Citation No. 3260305, issued on October 4, 1988. Payment of the penalty is to be made to MSHA within thirty (30) days of the date of this decision and order, and upon receipt of the payment, this matter is dismissed.

George A. Koutras  
Administrative Law Judge