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SOL (MSHA) V. MORRIS SAND & GRAVEL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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April 7, 1994

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 92-195-M
Petitioner	:	A.C. No. 41-03200-05515
	:	
v.	:	Docket No. CENT 92-196-M
	:	A.C. No. 41-03200-05516
MORRIS SAND & GRAVEL	:	
Respondent	:	Docket No. CENT 92-226-M
	:	A.C. No. 41-03200-05517
	:	
	:	Plant No. 1
	:	
	:	Docket No. CENT 92-197-M
	:	A.C. No. 41-03476-05517
	:	
	:	Docket No. CENT 92-225-M
	:	A.C. No. 41-03476-05519
	:	
	:	Docket No. CENT 92-280-M
	:	A.C. No. 41-03476-05520
	:	
	:	Plant No. 2

DECISION

Appearances: Olivia Tanyel Harrison, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, for Petitioner;
Harriett Morris, Thomas Morris, Pro Se, Spring, Texas, for Respondent.

Before: Judge Cetti

These consolidated cases are before me upon the petition for civil penalties filed by the Secretary of Labor (Secretary) under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. the "Act." The Secretary on behalf of the Mine Safety and Health Administration (MSHA), charges the Respondent, the operator of Morris Sand and Gravel (Morris), with 10 violations of regulatory safety standards in 30 C.F.R. Part 56 covering Sand and Gravel mining operations.

The operator filed a timely answer contesting the alleged violations. Pursuant to notice, a hearing on the merits was held before me at Houston, Texas. The primary issues were the existence of the violations as alleged in each of the 10 citations, whether certain violations were "significant and substantial," whether certain unwarrantable failure findings should be affirmed and the appropriate penalties assessed. MSHA Inspector Joseph Watson was Petitioner's only witness. Thomas Morris, Harriett Morris and Leonard Ingle testified on behalf of Respondent.

Thomas and Harriett Morris are the working owners and operators of Morris Sand and Gravel. This is a small family enterprise located in Spring, Texas. The Morrises stated that they are operating under Chapter 11 Bankruptcy under a Plan of Reorganization signed by Judge Manuel D. Seal, United States Bankruptcy Court Southern District of Texas Houston Division.

In addition to having a young lady in the scale house Respondent normally had two employees in Plant No. 1 and two employees at Plant No. 2. At the time of the inspection there was only one person at Plant No. 1 and at the time of the hearing Plant No. 1 was no longer open.

STIPULATIONS

At the hearing the parties stipulated as follows:

1. Morris Sand and Gravel is engaged in commerce within the meaning of the Mine Act and is subject to the jurisdiction of that Act.

2. The violations were abated in a timely fashion.

3. Morris Sand and Gravel employs about four people in the field and one at the scale house.

4. Respondent is a small sand and gravel operator.

5. Morris Sand and Gravel filed for Chapter 11 Bankruptcy on August 21, 1987, in United States Bankruptcy Court Southern District of Texas Houston Division and was assigned No. 87-08067-H1-11. The Plan of Reorganization was signed by Judge Manuel D. Leal on April 17, 1989.

Docket No. CENT 92-196-M
Citation No. 03899553

This citation alleges a non S&S violation of 30 C.F.R. 56.16005. This mandatory safety standard provides as follows

> Compressed and liquid gas cylinders shall be secured in a safe manner.

Inspector Watson testified that during his inspection he observed two gas cylinders unsecured and leaning against each other on "soft ground." He believed the possibility of an acci-dent occurring was "unlikely" because of the minimal number of people working at the plant. He stated that there was a "limited amount of exposure." The violation was promptly abated.

The evidence presented established a non S&S 104(a) viola-tion of the cited safety standard as alleged in the citation. The citation is affirmed.

Docket No. CENT 92-196-M
Citation No. 03898636

This citation alleges a non S&S 104(a) violation of 30 C.F.R. 56.006 which states in pertinent part "Valves on com-pressed ga cylinders shall be protected by covers when being transported or stored."

Inspector Watson testified that he observed bottles (cylin-ders) on a welding trailer at the edge of the yard. The com-pressed gas cylinders were not in use and did not have covers on the valves.

The Respondent did not dispute that the valves were not covered but stated the possibility of injury was unlikely because the cylinders were stored on a welding rack and further secured by a chain. The inspector agreed that the possibility of injury occurring was unlikely and stated that was why the violation was cited as a "non S&S" 104(a) violation.

Even though injury was unlikely the standard provides for no exceptions. When the cylinders are being stored they must be capped. The evidence presented clearly established the viola-tion of the cited safety standard. The citation is affirmed.

Docket No. CENT 92-226-M
Citation No. 3898637

This citation alleges a 104(a) non S&S violation of 30 C.F.R. 56.4201(a)(2). This safety standard reads as follows

> (a) Firefighting equipment shall be inspected according to the following schedules:

> (2) At least once every twelve months, maintenance checks shall be made of mechanical parts, the amount and condition of extinguishing agent and expellant, and the condition of the hose, nozzle, and vessel to determine that the fire extin-guishers will operate effectively.

The citation alleges that the fire extinguisher on the dredger at Plant 1 had not been inspected for more than 12 months. The evidence presented established that the fire extin-
guisher had last been inspected and serviced about 15 months prior to the date the citation was issued. The evidence was undisputed.

By way of mitigation Respondent presented evidence it had contracted with an independent company to conduct regular yearly inspections and servicing of fire extinguishers and that company had not performed its job in a timely manner as required by the contract. The violation was timely abated.

As pointed out in the Secretary's brief, irrespective as to whose acts caused the violation, the operator is responsible. Allied Products Co., 666 F.2d at 894.

The 104(a) non S&S violation of 30 C.F.R. 56.4201 was established as charged in the citation. The citation is affirmed.

Docket No. CENT 92-197-M
Citation No. 3899542

This citation alleges a 104(d)(1) S&S violation of 30 C.F.R. 56.12025. The citation states that the ground lug was missing o the plug of the long extension cord to the 110v electric motor for the diesel fuel pump.

MSHA Inspector Joseph Watson who made the inspection testi-fied that the extension cord was plugged into a 110v receptacle. The pump was not in use but the cord was energized.

The inspector stated that if an accident occurred it could be expected to cause serious injury or death. He stated that "if" there is a fault, it is almost certain there is going to be an injury. The violation was promptly abated by taking the extension cord out of service.

The inspector conceded on cross-examination that he does not know who plugged the cited extension cord with a missing ground lug into the receptacle.

Leonard Ingle called by Respondent testified that he lives across the street from Respondent's plant. He is a neighbor. He is not an employee of Respondent. The extension cord in ques-tion belonged to him and not to Respondent.

Mr. Ingle explained that he went to Respondent's plant to pump diesel fuel into his truck. He pulled Respondent's exten-
sion cord out of the wall socket and inadvertently damaged the cord so that it was no longer functional. Mr. Ingle went across

the street to his place and got the extension cord in question out of his shed behind his house and substituted his extension cord which had no ground lug for Respondent's cord. He did this "real quiet" because he "didn't want Tom (Morris) to get mad" at him for destroying the plant's extension cord.

Mr. Tom Morris testified that the witness Leonard Ingle is a good customer and is not an employee. Morris was not aware that Ingle had "torn up" the plant's extension cord and substituted his (Ingle's) cord for the one Morris used to energize its pump. Morris stated he "certainly wasn't aware" that there was no ground lug on the substituted extension cord and he knew nothing about the substitution prior to receiving the citation.

As pointed out by Petitioner it is "irrelevant whose act (caused) the violation." Allied Products Co., 666 F.2d 894. The evidence clearly established a violation of 30 C.F.R. 56.12025. The fact of violation is affirmed.

Whether or not the violation was "significant and substantial" or resulted from Respondent's "unwarranted failure" will be discussed below along with other contested citations issued by the inspector that were also characterized S&S and as "unwarrant-able failure" on the part of Morris Sand and Gravel.

Docket No. CENT 92-195-M
Citation No. 3899554

This citation alleges a 104(d)(1) S&S violation of 30 C.F.R. 56.14130(g) which reads in pertinent part

> Seatbelts shall be worn by the equipment operator.

Inspector Watson testified that when he inspected the sand and gravel operation at Plant No. 1 there was only one person working at the plant. That employee, Larry Wickman, was operating a front-end loader, loading the trucks of customers who purchased material at the plant. The inspector later observed the employee operate the loader along a haul road to repair a berm. At that time the inspector observed the employee did not have his seat belt fastened.

On cross-examination when asked as to the speed of the loader at the time of violation the inspector replied "I doubt very much (the loader) ever exceeded three to four miles an hour."

The evidence presented clearly established a violation of 30 C.F.R. 56.14130(g). The fact of violation is affirmed.

The question of the penalty and whether the violation is a 104(d)(1) S&S violation will be considered and discussed below along with other citations that were so designated.

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 signifi cant 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:

> 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:

> 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). (Emphasis in original).

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

made in the context of continued normal mining operations. National Gypsum, supra, at 329. Halfway, Inc., 8 FMSHRC 8, 12 (January 1986); U.S. Steel Mining Co., 7 FMSHRC supra, at 1130 (August 1985).

UNWARRANTABLE FAILURE

In Emery Mining Corp., 9 FMSHRC 1997, 2004 (December 1987), the Commission held that unwarrantable failure is aggravated conduct constituting more than ordinary negligence. Ordinary negligence is the failure to use such care as a reasonably prudent and careful person would use, and is characterized by "inadvertence," "thoughtlessness," and "inattention." Unwarrantable failure is characterized by such conduct as "reckless disregard," "intentional misconduct," "indifference" or a "serious lack of reasonable care." Emery, supra, at 2003-04; Rochester & Pittsburgh Coal Co., 13 FMSHRC at 189, 193-94 (February 1991).

DISCUSSION

Was the violation of 30 C.F.R. 56.12025 a 104(d) S&S violation? Mr. Morris' credible testimony established that the extension cord Respondent installed had a ground lug and was properly grounded. Respondent was unaware that a third party, Mr. Ingle, had damaged the Respondent's extension cord and replaced it with one that had the ground lug missing. The fact that Respondent was unaware is irrelevant on the issue of the existence of the violation. As pointed out in Petitioner's brief the Fifth Circuit has held that "if the Act or its regulations are violated, it is irrelevant whose act precipitated the violations or whether or not the violation was found to affect safety; the operator is liable." Allied Products Co. v. FMSHRC, 666 F.2d 890, 894 (5th Cir. 1982). The violation of the safety standard was established but there remains a question as to whether it was properly designated a 104(d) S&S violation.

In the Mathies case the third element required to establish a violation of a mandatory safety standard as significant and substantial is a "reasonable likelihood that the hazard contributed to will result in an injury." The purpose of a ground is to protect an exposed person from injury in the event there is a ground fault. In this case the inspector stated that the "possibility" of an accident occurring was likely but no evidence whatever was presented about conditions in the area of the violation or the condition of the cord that would persuasively show a ground fault was reasonably likely to occur. There was no evidence of damp or wet conditions in the area, no evidence of worn, chaffing or disintegration of cord sheath or cord insulation, nor of any loose clamps, fittings or other conditions in the area or the condition of the cord that would indicate a ground fault was more than a possibility.

With respect to a possibility of a ground fault the inspector only stated "if there was a fault" there would be an injury. Since Petitioner has the burden of proof there should be some persuasive evidence about the circumstances or about the conditions in the area of the violation or the condition of the 110v cord to persuade the trier of the fact that there was more than a mere possibility of a ground fault. The evidence was insufficient to establish the third element of the Mathies formula. Within the framework of the law and evidence presented I find the evidence did not establish an S&S violation of the cited standard.

With respect to the designation of unwarrantable conduct, I find that the evidence presented established that Respondent was unaware that a third party, Mr. Ingles, had substituted an extension cord without a ground plug for Respondent's extension cord which was properly grounded. Petitioner points to the requirement of an uncited standard [30 C.F.R. 57.18002(a)] which provides that "each working place should be examined at least once each shift for conditions which may adversely affect safety or health." 30 C.F.R. 57.18002(a). There was, however, no satisfactory evidence as to how long the violative condition existed. I know of no requirement that Respondent pull the various extension cords in use on the work site out of their sockets each day to determine if someone has substituted the properly grounded extension cord with one that has the ground plug missing. Even assuming that the uncited standard referenced by Petitioner requires such conduct we have insufficient evidence in this case as to how long the violative condition existed other than a "short time."

Even more important and germane to the issue there is no persuasive evidence of conduct on the part of Respondent that should be characterized as "aggravated conduct constituting more than ordinary negligence." It is on this basis that I find the violation cited was not a result of Respondent's "unwarrantable failure." The violation was a 104(a) non S&S violation of the citation and it shall be so modified.

Citation No. 3899554 designated by the inspector as a 104(d) S&S violation was issued when the inspector observed that the operator of the front-end loader while traveling not more than 3 or 4 miles per hour, along the haul road had failed to fasten his seat belt.

The loader operator was abating a citation issued earlier that day for an inadequately bermed area with a drop-off. The inspector did not take measurement. He described the grade in the area at a "slight grade", "not very much", "probably" in the "two to five percent range."

The operator's failure to fasten his seat belt was clearly a serious violation of 30 C.F.R. 14130(g) involving a moderate to high degree of ordinary negligence on the part of the operator.

I find the first two elements of the "S&S" criteria were clearly established. I do not find, however, the evidence established the third element of the Mathies "S&S" criteria. A significant and substantial violation is not established by merely showing that the chance of an injury is more than remote or speculative. See National Gypsum, supra. Accordingly, I find this violation of 30 C.F.R. 14130(g) was not an S&S violation.

With respect to the unwarrantable failure finding it appears the operator in his haste to correct a citation for an inadequate berm, thoughtlessly and inadvertently neglected to fasten his seat belt. Was this conduct properly characterized as unwarrant-able failure? Unwarrantable failure is aggravated conduct con-stituting more than ordinary negligence. Emery Mining Corp., 9 FMSHRC 1997, 2004 (1997). Unwarrantable failure is characterized by such conduct as "reckless disregard," "intentional miscon-duct," "indifference," or a "serious lack of reasonable care." Rochester and Pittsburgh Coal Co., 13 FMSHRC 189 (1991). The Commission has also stated that use of a "knew or should have known test by itself would make unwarrantable failure indistin-guishable from ordinary negligence" and, accordingly, the Com-mission rejected such an interpretation. Secretary v. Virginia Crews Coal Co., 15 FMSHRC 2103 (1993).

Within the framework of the law and the evidence presented I find this violation resulted from the operator's moderate to high ordinary negligence and was not a result of Respondent's "unwar-rantable failure." The violation was a 104(a) non S&S violation of the cited seat belt standard and shall be so modified.

Docket No. CENT 92-225-M
Citation No. 3899548

Citation No. 3899548 charges Morris with a 104(a) S&S viola-tion of 30 C.F.R. 56.14101(a)(3) which requires all braking systems on mobile equipment be maintained in functional condi-tion. The citation states that the parking brake on the front-end loader in the material yard and plant area "does not work." Respondent in its answer as well as its testimony at the hearing admitted the parking brake was not working. By way of mitigation Respondent presented evidence that the material yard in which the loader was used is level and there was never any need to use the parking brake. The loader was parked in gear.

The undisputed evidence presented established a violation of 30 C.F.R. 56.14101(a)(3). The first two elements of the Mathies formula were clearly established. The evidence is insufficient to establish the third and fourth elements of the

Mathies criteria. The violation was not S&S. The citation shall be modified to a 104 non S&S and affirmed as modified.

Citation No. 3898638 alleges a 104(a) S&S violation of 30 C.F.R. 56.14101(a)(3). The inspector alleged and at the hearing testified that the front-end loader's service brakes were very inadequate and would barely stop the loader on the flat surface of the yard. He stated that with the loader traveling about 3 miles per hour it took approximately 50 feet to 60 feet to stop the loader by use of the service brakes alone. In addition it was established that this loader did not have a functional parking brake that could be used in an emergency to stop the loader. The inspector noted that the operator of the loader was "quite good" at stopping the loader by use of the transmission, but this is not what the standard requires.

Mrs. Morris contended that the brakes were adequate to stop the loader and stated that they had never had a loader run into anything and never had an accident of any kind.

I credit the testimony of the inspector that the service brakes on the front-end loader were not maintained in functional condition and that with continued use of the loader in normal mining operations with the service brakes in such poor condition an accident resulting in serious injury was reasonably likely to occur. I conclude that all four elements of the Mathies formula were established. The violation was properly cited as a "signicant and substantial" violation.

The evidence established a significant and substantial violation of 30 C.F.R. 56.14101(a)(3). This citation is affirmed as written without modification.

Docket No. CENT 92-225-M
Citation No. 3899546

This citation charges the operator with a 104(a) S&S violation of 30 C.F.R. 56.14132(a). It alleges that the back-up alarm on the front loader was not functioning. 30 C.F.R. 56.14132 requires audible warning devices on self-propelle mobile equipment "shall be maintained in functionable condition."

In Plant No. 1, where only one employee was working, the inspector observed that employee was operating the front-end loader loading a truck. The inspector observed that the backup alarm was not functioning when the loader was backing up.

Respondent in its answer and testimony concedes that the backup alarm was temporarily out of order and states that the plug of the wire to the alarm, unknown to the operator, had jiggled out of the receptacle and when plugged back into the transmission, the alarm was functional. Respondent also

presented credible evidence that the loader was a substitute loader that was being temporarily used while the loader that was regularly used at the plant was temporarily out of service for repairs.

The violation of 30 C.F.R. 56.132(a) was clearly established. The fact of violation is affirmed.

With respect to the S&S designation, there were no employees exposed to the hazard since the only employee at the plant was operating the loader. The inspector testified however, that he observed two instances where a customer got out of the cab of his truck while waiting to be loaded. Respondent presented credible evidence that customers normally stay in the cab of their truck while waiting to be loaded.

Failure to have the backup alarm on a front-end loader functional at all times is a serious violation with a high potential gravity. I have no difficulty finding the first two and the fourth elements of the Mathies formula. In the instant case where the only employee at the plant was the operator of the loader I do not find the evidence sufficient to persuade me that the third element of the Mathies formula was established. The citation shall be modified accordingly to a 104(a) non S&S violation.

Docket No. CENT 92-196-M
Citation No. 3899552

This citation alleges a 104(a) S&S violation of 30 C.F.R. 56.9300(a) at Plant No. 1. The citation reads as follows

> No berm was provide (sic) along the main axces (sic) road next to the stock pile. (Customer's) Haul trucks drive within (5') five foot of the (8') eight foot drop off. Loader uses this road, traveling to and from various stock piles.

The cited safety standard 30 C.F.R. 56.9300(a) provides as follows:

> Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

The inspector "noticed" there was an inadequate berm along a road where customers parked their trucks to be loaded. The existing berm had deteriorated. A few feet off the roadway (five feet) was what the inspector described as a "shallow" drop-off.

He did not measure the drop-off but he estimated it to be a 6 to 8 feet deep.

This haul road was used by customers and the one employee working at the plant. The employee was operating the front-end loader to load trucks and intermittently to rebuild the berm. The loader was not traveling more than 3 or 4 miles an hour.

The evidence presented established a violation of the cited safety standard 30 C.F.R. 56.14120(g).

The 6- to 8-foot drop-off was 5 feet from the outer edge of the haul road used by customers in trucks and one employee. This failure to have a berm is a serious violation but not an S&S violation in the instant case since the evidence is insufficient to establish the third element of the Mathies criteria. This finding is consistent with the evidence that there has never been an accident at the plant since its beginning in 1979. The citation shall be modified to a 104(a) non S&S violation of the cited safety standard.

Docket No. CENT 92-280-M
Citation No. 03899541

This citation alleges an S&S 104(a) violation of 30 C.F.R. 56.12040

The citation cited reads as follows:

> The electrical enclosure approximately 3' by 3' at the MCC for the plant contains several breakers and re-sets. In order to operate these controls employees are exposed to the many energized parts in the box.

30 C.F.R. 56.12040 provides as follows:

> Operating controls shall be installed so that they can be operated without danger of contact with energized conductors.

The inspector testified that he observed an electrical enclosure in which operating controls consisting primarily of a group of switches were installed. In order to reset a breaker one would have to open the door of the enclosure box. When the door was opened to reset a breaker, various inner parts in the enclosure remained energized. The person resetting the breaker was thus exposed to the danger of contact with energized conductors.

By way of mitigation Respondent presented evidence that there was some misunderstanding of what was required to comply

with the standard. Mr. Morris was under the impression that Respondent was in compliance. This violation was timely abated.

The evidence presented established a violation of the cited safety standard, 30 C.F.R. 56.4201.

The inspector testified that contact with an exposed part was reasonably likely when an employee resets a breaker or performs a similar task. Contact with an exposed part would reasonably likely result in a serious injury or a fatality. I agree with the inspector that there was a reasonable likelihood that the hazard contributed to, with continued normal mining operations would result in an event in which there would be serious injury. The violation was significant and substantial. The citation is affirmed as written without modification.

Penalty Assessment

In a contested civil penalty case the judge hearing the case is not bound by the penalty assessment regulations and practices followed by MSHA's Office of Assessments in arriving at initial proposed penalty assessments. After a hearing in a contested case the amount of the penalty is assessed de nova by the judge based on the statutory criteria specified in section 110(i) of the Act, 30 U.S.C. 820(i), and the relevant evidence developed in the course of the hearing. Shamrock Coal Co., 1 FMSHRC 469 (June 1979); aff'd, 652 F.2d 59 (6th Cir. 1981); Sellersburg Stone Company; 5 FMSHRC 287, 292 (March 1983).

I have considered the statutory criteria specified in section 110(i) of the Act. Morris Sand and Gravel is a small family-owned and operated Sand and Gravel business. It appears from the record that the working owners, operators of this small enterprise are operating under Chapter 11 of the Bankruptcy Code to pay all past obligations. All citations were timely abated showing good faith in achieving compliance with the Act. Negligence and gravity have been considered and discussed along with the issues of significant and substantial violations and unwarrantable failure.

Having considered the 6 statutory criteria set forth in section 110(i) of the Act and particularly my concern that the proposed civil penalty assessments on this small operator may adversely affect Respondent's ability to continue in business, I deem it appropriate in this case to assess a civil penalty of $50 for each of the 104(a) non S&S violations and $100 penalty for each of the 104(a) S&S violations. I believe these penalties in this case will effectuate the deterrent purpose of the Act. See Robert G. Lawson Coal Company, 1 IBMA 115, 117-118 (1972).

ORDER

It is ORDERED that the fact of violation in each of the 10 citations referenced above in all 6 dockets be AFFIRMED.

It is further ORDERED that the significant and substantial designation for Citation No. 3898638 in Docket No. CENT 92-226-M and Citation No. 3899541 in Docket No. CENT 92-280-M be AFFIRMED.

It is further ORDERED that Citation No. 3899552 in Docket No. CENT 92-196-M and Citation No. 3899548 and Citation No. 3899546 in Docket No. CENT 92-225-M be MODIFIED by deleting the significant and substantial designations.

It is further ORDERED that Citation No. 3899554 in Docket No. CENT 92-195-M and Citation No. 3899542 in Docket No. CENT 92-197-M be MODIFIED by deleting the unwarrantable failure finding and the significant and substantial designations.

It is further ORDERED that the penalty assessments for violations in each of the dockets be as follows:

Docket No. CENT 92-195-M

Citation No.	Penalty Assessment
3899554	$ 50.00

Docket No. CENT 92-196-M

Citation No.	Penalty Assessment
3898636	$ 50.00
3899552	50.00
3899553	50.00

Docket No. CENT 92-197-M

Citation No.	Penalty Assessment
3899542	50.00

Docket No. CENT 92-225-M

Citation No.	Penalty Assessment
3899546	50.00
3899548	50.00

Docket No. CENT 92-226-M

Citation No.	Penalty Assessment
3898637	50.00
3898638	100.00

Docket No. CENT 92-280-M

3899541	100.00
TOTAL	$600.00

It is further ORDERED that RESPONDENT PAY the above assessed penalties within 40 days of the date of this decision. Upon receipt of payment these cases are dismissed.

August F. Cetti
Administrative Law Judge

Distribution:

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