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SOL (MSHA) V. POWER OPERATING CO
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	CIVIL PENALTY PROCEEDINGS
v.	:	
	:	Docket No. PENN 92-849
POWER OPERATING COMPANY, Respondent	:	A. C. No. 36-02173-03572
	:	
	:	Docket No. PENN 93-13
	:	A. C. No. 36-02713-03574
	:	
	:	Docket No. PENN 93-166
	:	A. C. No. 36-02713-03579
	:	
	:	Docket No. PENN 93-171
	:	A. C. No. 36-02713-03581
	:	
	:	Docket No. PENN 93-286
	:	A. C. No. 36-02713-03583
	:	
	:	Docket No. PENN 93-499
	:	A. C. No. 36-02713-03589
	:	
	:	Docket No. PENN 93-500
	:	A. C. No. 36-02713-03590
	:	
	:	Docket No. PENN 94-7
	:	A. C. No. 36-02713-03591
	:	
	:	Docket No. PENN 94-8
	:	A. C. No. 36-04999-03541
	:	
	:	Leslie Tipple

DECISION

Appearances: Richard W. Rosenblitt, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, PA for Petitioner
Michael T. Farrell, Esq., Stradley, Ronon, Stevens & Young, Philadelphia, PA for Respondent

Before: Judge Weisberger

Statement of the Case

These cases, consolidated for hearing, involve Petitions for Assessment of Civil Penalty filed by the Secretary (Petitioner) alleging violations of various mandatory regulatory safety

standards set forth in Part 30 of the Code of Federal Regulations. Subsequent to the filing of Answers by the Operator (Respondent) and subsequent to discovery, these cases were heard in Johnstown, PA on August 30 and 31, 1994. On November 14, Petitioner and Respondent filed post-hearing briefs.

Findings of Fact and Discussion

I. Docket No. PENN 93-166

A. Violation of 30 C.F.R. 77.1104(b)

On December 3, 1992, Charles S. Lauver, an MSHA inspector, inspected the 009 Pit at the Frenchtown Mine. Lauver initially observed the highwall from his vehicle when he was approximately 80 to 100 feet from the highwall. The highwall was approximately 100 feet long, and approximately 50 feet high. Lauver approached the highwall by foot. When he was approximately 20 feet from the base of the highwall, he observed loose rocks scattered along the full length of the highwall at all levels of the highwall. He estimated that approximately 25% of the vertical area of the highwall was covered with loose material. He said that the size of the loose material that was round in shape, ranged from the size of golf balls up to twelve inches in diameter. The size of the loose material that was square in shape ranged from 2 inches by 2 inches to 10 to 12 inches by 4 to 6 inches. In addition, he observed approximately 10 to 12 deep cracks in the highwall. He estimated that the longest cracks were 5 to 8 feet in length, and the shortest ones were 2 feet in length. He estimated that, at the most, they extended 10 to 12 inches deep into the highwall. According to Lauver, the cracks were scattered along the length of the highwall. He opined that the presence of cracks indicates some degree of deterioration of the highwall. Also, he noted that cracks allow water to enter the highwall. He indicated that upon freezing, the water would expand, causing material to become loose from the highwall.

He also observed a thin layer of mud in at least one area. He estimated that the mud was probably 12 inches square, and a quarter inch thick. He opined that the mud layer was evidence of a "mud slip." (Tr. 69). He described a mud slip as a very thin layer of mud that exists inside the highwall between two layers of rock or shale. He said that, in general, because a mud slip is slippery, it can cause rocks to slide off the highwall at any time.

Lauver also described a void or undercut at the base of the highwall which was 5 feet deep, 10 feet high, and extended approximately 30 feet in length. He explained that because of the void, there would be less support for the overhang (area immediately above the void) causing instability to the highwall.

Lauver issued a citation alleging a violation of 30 C.F.R. 77.1104(b) which provides as follows: "Overhanging highwall and banks shall be taken down and other unsafe ground conditions shall be corrected promptly, or the area shall be posted."

On cross-examination, it was elicited from Lauver that during his inspection he did not see any material falling from the highwall and that, in essence, cracks on highwalls are common. He also agreed that standing at a point on the ground 20 feet from the highwall, which was the closet he got to the highwall, and ". . . looking up at a 50 foot highwall at objects that were as small as golf balls at some point, you would have a hard time telling for certainty whether they were loose." (Tr. 102) (sic).

Larry Kanour, Respondent's safety director, was the only witness on behalf of Respondent. He had not inspected the highwall on December 3, prior to the time it was cited by Lauver at approximately 8:00 a.m. However, he indicated that in his examination of the highwall on December 2, 1992, he had not noticed any loose material. He indicated that after he had inspected the highwall, he did not believe that it had any unsafe loose rocks, mud slips, cracks, or undercuts. On cross-examination, it was elicited that the examination that he had made of the highwall on December 2, was from his vehicle, approximately 70 feet from the highwall.

I find that the general testimony of Kanour regarding his opinion that there were no unsafe conditions on December 3, as observed from his vehicle 70 feet from the highwall, is insufficient to rebut or contradict Lauver's detailed testimony regarding the quantity, size, and extent of the various conditions he observed from approximately 20 feet from the base of the highwall. Based on the nature and extent of the conditions observed by Lauver, I find that on December 3, there were unsafe conditions on the highwall that had not been corrected. Also a portion of the highwall was overhanging a void. I also find that the unsafe areas of the highwall were not posted. I thus find that Respondent violated Section 77.1004(b), supra.

B. Unwarrantable Failure

In order to establish that a violation resulted from an operator's unwarrantable failure, it must be established that the operator engaged in aggravated conduct which is more than ordinary negligence (Emery Mining Corp., 9 FMSHRC 1997, 2203-2204 (1987)).

According to Kanour, he had not noticed any loose material in his inspection of the highwall on December 2. He indicated that on December 3, he had not yet inspected the highwall prior to the time it was cited. Lauver opined that on December 3, the loose material on the highwall was "very obvious" to him, and it was "very visible." (Tr. 87). He also said that the undercut was "very visible." (Tr. 87). He opined that the loose material and other conditions that he observed, had been in existence over two to three 12 hour shifts. He based his opinion upon the extensive loose materials seen on October 3. There is no evidence as to when the void or overhang had been created.

I accept the detailed testimony of Lauver regarding the extent and types of various conditions he observed on the highwall. Also, in light of his experience, I accept his conclusion that the conditions were very visible, and very obvious. Due to the extent and nature of these conditions, I find that the violation herein resulted from Respondent's aggravated conduct in not having observed these conditions from a position where they could have been observed, and not having taken steps to have these conditions corrected, or having had the area posted. I thus find that the violation herein resulted from Respondent's unwarrantable failure.

C. Significant and Substantial

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).

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

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1. On cross examination he indicated that two-thirds of the "condition" was totally obscured "as I approached it." (Tr. 125) (emphasis added). I find this admission to be insufficient to dilute his testimony on direct examination that the undercut was "very visible." (Tr. 87).

> 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).

I have found that the cited conditions herein constituted a violation of Section 77.1104(b), supra. Also the evidence indicates that these conditions created the hazard of an injury from falling rock. Lauver indicated on cross-examination that when he examined the highwall, he stood in the area that he had previously described on direct-examination as being exposed to the danger of falling rocks or other material. Kanour indicated that the drill operator who worked on December 2 had not complained about any dangerous condition. Kanaour also indicated that he had not received any complaints from the drill operator who worked on December 3, a Mr. Eckburg, about dangerous conditions "in that Pit." (Tr. 134). Kanour also indicated that the cab of the drill rig was steel enclosed.

I accept Lauver's uncontradicted and unimpeached testimony that the drill operator spends approximately 15% to 20% of his time outside the cab performing various duties such as moving the drill, or removing chips from the drill holes. This individual would then be exposed to the danger of being hit by falling material from the highwall. Taking into account the size and extent of unsafe material on the highwall, I conclude that it has been established that the violation contributed to the hazard of an injury from falling material, and that this injury was reasonably likely to have occurred. Due to the extent and size

of the loose material on the highwall, I find that there was a reasonable likelihood that the resulting injury would be of a reasonably serious nature. I find that the violation was significant and substantial.

D. Penalty

I find that the violation herein was of a high level of gravity, and resulted from more than ordinary negligence. I find that a penalty of $9,000 is appropriate.

II. Docket No. PENN 93-286 (Citation No. 3709747)

According to Lauver, on December 3, 1992, while continuing to inspect the highwall, he traveled to the upper bench above the highwall. Using a slope meter, he sighted along the slope of the highwall, and the meter indicated a slope of 0 degrees. He issued a citation pursuant to 30 C.F.R. 77.1000, alleging a failure to follow the Ground Control Plan ("Plan") because the highwall was vertical for a 300 foot distance ". . . . and there is loose material on the highwall and the highwall was undercut for over 30 ft." (sic).

The Plan provides for the slope of the highwall to be as follows "ñ 12ø" (Government Exhibit 9, p. 5). The Plan also provides as follows: "Note: All loose material removed from highwalls by drag line or other equipment during the progress of the operation." (Government Exhibit 9, p. 5). (Emphasis added). Further, as pertinent, the Plan provides that "Where the height of the highwall is such where it cannot be reached with the equipment to remove loose material, a barricade will be provided along the highwall to prevent falling material from injuring workmen."

Kanour indicated that he was instrumental in creating the Plan. He opined that the slope of the highwall did conform to the Plan. Lauver indicated on cross-examination all highwalls "curve," and are "not uniform all the way across." (Tr. 185). He also explained that it is nearly impossible to maintain an exact degree of slope on a highwall, and hence, a 3 to 4 degree variance is allowed.

I find, as set forth above, I(A) infra, that the evidence establishes that there were loose materials throughout the highwall. Since the highwall was 50 feet high, some of the loose material could not have been reached with equipment. Since a barricade was not provided as required by the Plan, I conclude that the plan has been violated. Also, since the

operation continued in spite of loose material being on the highwall I find that there was a violation of the section of the Plan which requires the removal of such material "during the progress of the operation." Hence I find that it has been established that Respondent did violate its Plan, and hence did violate Section 77.1000, supra. I find that the violation was significant and substantial, essentially for the same reasons setforth above, I(C) infra. I find that a penalty of $1,779 is appropriate.

III. Docket No. PENN 92-849

A. Violation of 30 C.F.R. 1607(a)(a)

According to Lauver, on July 1, 1992, he observed three to five Caterpillar 777 and 785 rock trucks. He said that the trucks were loaded with overburden consisting of rocks, shale, soil, and clay. He said the largest items were approximately 2 feet by 4 feet. According to Lauver, the material in the trucks ". . . was far above the sides of the bed." (Tr. 215). Lauver further indicated that materials were falling off both the sides and the rear of the trucks as they traveled down the road. He said that some areas of spillage on the roadway extended 10 feet in strips, and that in addition, in some areas ". . . there would be a pile approximately a foot to 18 inches in depth." (Tr. 220).

Lauver issued a citation alleging a violation of 30 C.F.R. 77.1607(a)(a), which provides as follows: "Railroad cars and al trucks shall be trimmed properly when they have been loaded higher than the confines of their cargo space."

Greenawalt opined that there were not enough rocks spilling out of the trucks to constitute any danger. According to Greenawalt, once a coal truck is loaded with coal by a loader, the operator of the loader trims the coal truck as follows: "(he) will pack the top down and pack the side down with the bucket on the loader. . . ." (Tr. 333). Greenawalt explained that in contrast, rock trucks are loaded by hydraulic shovels. He said that in loading the Caterpillar 785 rock trucks, the hydraulic loader loads until a red light appears on a computer, signaling that the truck is loaded. Kanour testified that pedestrians are not allowed in the area where rocks fall off trucks. He also said that vehicles are not allowed to drive so as to be in danger of being hit by falling rocks. Greenawalt explained that trucks straddle, or go around spillage. He said that in normal operations, spillage is cleaned by a grader or dozer. Also, loaded trucks are given the right-of-way on the 100 foot wide roadway.

Richard Dufour, who operated the hydraulic shovel that loaded the trucks at issue, opined that the trucks were not improperly loaded, and they did not constitute any danger to him.

Lauver indicated on cross-examination that it is not possible to trim a rock truck after it has been loaded.

The term "trimmed properly" as contained in Section 77.1607(aa) supra, is not defined in the Act, or Title 30 of the Code of Federal Regulations. "Trim" is defined in Webster's Third New International Dictionary (1986 Edition), as pertinent, as follows: "to reduce by removing excess or extraneous matter." Hence, applying the common meaning of the term "trim" I find that, the term "trimmed properly" means that if a truck contains excess material that juts out beyond the confines of the cargo area, the material must be trimmed. (See, Peabody Coal Company), 2 FMSHRC 1072, (May 7, 1990) (Judge Laurenson); Power Operating Company, 16 FMSHRC 591 (March 23, 1994) (Judge Weisberger); Power Operating Company, 16 FMSHRC 1380, 1394 (June 30, 1994). (Judge Weisberger)).

I accept the testimony of Lauver, inasmuch as it was not contradicted or impeached, that the trucks at issue were loaded with materials above both sides and the rear of the trucks at issue. Hence, I conclude that the cited trucks were loaded higher than their cargo space. I thus conclude that Respondent violated Section 77.1607(a)(a), supra.

B. Significant and Substantial

Lauver described having observed material falling off both sides, and the rear of the trucks at issue as they traveled down the roadway. He also described piles of material on the road 1 to 1 1/2 feet deep. He said that other areas of spillage extended in 10 foot strips. He said that there were approximately 200 to 300 pounds of spillage on the roadway. Lauver described the rocks that had been spilled as being extremely sharp. He also indicated that because the material was falling off the trucks as they travelled, other trucks that travel on the road could be hit by the falling material. Also, on occasion, miners work in the area where the trucks travel, to fuel the rock trucks from a fuel truck.

Greenawalt indicated that it is standard procedure for a grader to clean spilled material as soon as such material is noted by the operator of the grader, or as soon as the operator is notified of the spillage by him (Greenawalt), or one of the other truck drivers. Greenwalt indicated that the major portion of the graders' workday is spent cleaning spillage. He further

indicated that Respondent has guidelines which require other vehicles in the area to yield the right-of-way to loaded rock trucks. He also stated that it is Respondent's policy to unload a rock truck with a shovel prior to any repair work being performed on it. Kanour indicated that vehicles are not allowed to be driven in such a fashion as to be in danger of being hit by falling rocks. He also stated that pedestrians are not allowed in the area of falling rock.

I take cognizance of Respondent's guidelines and work practices which are intended to minimize any risk of an accident due to the spillage of material from the trucks at issue. However, I place more weight upon the existence of the following physical factors: the number of trucks in violation of Section 77.1607(a)(a), supra; the fact that materials were above both sides and the rear of the trucks and were falling off of these areas; the extent of the spilled material on the roadway; and the presence of other vehicular traffic in the area. Within this framework I conclude that it has been established that, over time, there was a reasonable likelihood of an injury producing event resulting in injuries of a reasonably serious nature. I thus find that the violation was significant and substantial. (See U.S. Steel, supra).

C. Unwarrantable Failure

In essence, Respondent's witnesses opined that there was no hazard resulting from the conditions observed by Lauver. Respondent did not contradict the testimony of Lauver that on June 19, 1992, Lauver had previously cited Respondent for a violation of Section 77.1607(a)(a), supra, based upon conditions similar to those noted in the citation at issue. Respondent did contradict or impeach Lauver's testimony, that after he issued this citation he discussed with Respondent's agents the hazards connected with material falling from trucks. He indicated that after this discussion, Kanour told him that, referring to material being loaded above the cargo space, it would not happen again. Since this testimony of Lauver was not impeached or contradicted, I accept it. I thus find, based upon Lauver's testimony, that the violation herein was as a result of more than ordinary negligence, and constituted aggravated conduct. I thus find that the violation resulted from Respondent's unwarrantable failure (See Emery, supra). I find that a penalty of $8,000 is appropriate.

IV. Docket No. PENN 93-13 (Citation No. 3490430)

Lauver testified that he could not recall what he observed during an inspection on July 14, 1992. Specifically, he could

not recall citing a truck on that date. He stated that he did not remember any facts that led to the issuance of a citation on that date. Nor could he tell why he issued a Section 104(d)(2) order at that time. Accordingly, due to the lack of proof on the part of Petitioner, Order No. 3490430 is dismissed.

V. Docket No. PENN 93-171 (Citation No. 3709755)

Lauver testified that on December 8, 1992, he observed material falling from the bed of a rock truck. He indicated that the manner in which the material fell from the truck was the same as testified to him previously concerning Order No. 3490421. He indicated that the material that had fallen contained sharp edges, and was high enough to do damage to the tires or tie-rod of a pickup truck driven in the area. He opined that should damage occur, the steering of the vehicle would be affected, "causing a sudden stop which would in return jolt the operator, the driver of the truck." (Tr. 395).

Lauver issued a citation alleging a violation of 30 C.F.R. 77.1607(a)(a), supra. Essentially for the reasons discussed above, III(A) infra, I find that Respondent did violate Section 77.1607(a)(a).

Greenawalt, who was driving a pickup truck behind the truck in question, testified that he did not see material falling off the back of the truck. He did however see material on the road which he indicated was no danger to him, as the truck that he was driving could have driven around, or straddled the material. Greenawalt said there were no other vehicles in the area that were in any danger. He said had he seen material rolling off the back of the truck, he would have called to have the road cleaned. He also indicated that when he saw the material on the road he told the bulldozer operator to clean it up immediately, and the operator informed him that he was already on his way to clean it up.

For the reasons discussed above, III(B) infra, I conclude that the violation herein was significant and substantial, as well as the result of Respondent's unwarrantable failure.

I find that a penalty of $7,500 is appropriate.

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2. Since Lauver had no recollection of the facts that formed the basis of the order he issued, I place no probative weight on Government Exhibits 15 (the citation issued by Lauver) and 16 (Lauver's notes).

VI. Docket No. PENN 93-499 (Citation No. 3709734)

On June 21, 1993, Keith Russell Thompson was employed by Operators Unlimited, and was working at Respondent's Ginner Mine operating a Caterpillar 777 rock truck dumping material from a dumping site. Thompson estimated that the berm at the edge of the dumping site was 12 inches high, and was composed of dirt and rock. According to Thompson, after he had dumped at least 10 times, he picked up a load of materials, transported it to the dumping site, put the rock truck in reverse, and backed up to the berm traveling approximately 1 to 2 miles an hour. Thompson stated that once the back tire touched the berm, he "pushed the brake on" (Tr. 443), and the back of the truck slid beyond the berm for a distance of approximately 50 feet.

Perry Ray McKendrick, an MSHA inspector, was at the Ginner Mine on June 21, but did not observe the accident involving Thompson. Once McKendrick was informed of the accident, he went to the site of the accident. He estimated that the berm was three feet high in the area of the tire marks left by Thompson's vehicle. However, McKendrick indicated that at least part of the berm was at shoulder level. McKendrick said that the berm was loose, and was not packed down or consolidated. He estimated that the base of berm was 3 feet wide. He indicated that the slope of the dumping site averaged 45 degrees.

McKendrick issued a citation alleging a violation of 30 C.F.R. 77.1605(l) on the ground that the berm that was in place did not keep the truck at issue from traveling beyond the berm.

McKendrick indicated, on cross-examination, that he could not say that a berm at the mid-axle height of a 777 rock truck would definitely stop the truck from going beyond the berm. He also indicated on cross-examination that most berms are made of loose material. He further indicated that a driver of a 777 rock truck would have to "give some fuel to get the CAT 777 over the berm" i.e., a berm 3 feet high. (Tr. 525) (sic).

David Jackson, project administrator for Operators Unlimited, opined that it is not appropriate to bump into the berm in order to stop the vehicle. Jackson said that prior to

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3. McKendrick is 5'7" tall.

4. McKendrick stated that the diameter or the rear tires of the 777 truck in issue is 105 inches.

the accident Thompson was told not to hit the berm when backing up. Jackson fired Thompson, after the accident for negligently running through the berm.

30 C.F.R. 77.1605(l) provides as follows: "berms . . . . shall be provided to prevent overtravel and overturning at dumping locations." 30 C.F.R. 77.2(d) provides that the term berm "means a pile or mound of material capable of restraining a vehicle."

The plain language of 1605(l) requires berms to prevent overtravel. Adequacy of a berm may be an issue involving a violation of 30 C.F.R. 77.1605(k), relating to elevated roadways. However, Section 77.1605(l) supra has different and stronger wording. Thus, the only issue here is whether the berm prevented overtravel. It is undisputed that the rock truck overtraveled the berm in a dumping area. I thus find that Respondent did violate Section 1605(l), supra.

I find that the violation of Section 1605(l), supra, contributed to the accident that occurred in June 1993. The operator of the vehicle that overtraveled the berm was not injured. The berm was three feet high, in the area of the accident, and about a foot high elsewhere in the area. The midpoint of this diameter of the rear tires on the 777 rock truck in issue is approximately 4 1/2 feet. According to McKendrick, the driver of a 777 truck would have to "give some fuel to get the 777 over the berm" i.e., a berm three feet high. Within this context, I find the violation was not significant and substantial.
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5. Section 1605(k) supra requires only that berms "shall be provided" on the outer bank of elevated roadways. As such, the critical inquiry regarding an alleged violation of Section 1605(k), supra is whether the berms were adequate (U.S. Steel Corp, 5 FMSHRC 3 (1983). In contrast, Section 1605(l) specifies and qualifies that the berms are to be provided "to prevent overtravel."

6. In essence, Respondent argues that driver negligence caused the berm's failure, and therefore no violation occurred. I reject this argument. A miner's negligence is irrelevant to whether an operator violated a standard (it is relevant in rating its negligence). A mine operator is liable without regard to fault for all violations of mandatory safety standards occurring in its mine committed by its employees, even if caused by unforeseeable misconduct of a non-supervisory employee. ASARCO, Inc., 8 FMSHRC 1632 (1986), aff'd., ASARCO,Inc. v. FMSHRC, 868 F.2d 1195 (10th Cir. 1989); Southern Ohio Coal Co., 4 FMSHRC 1459, 1462 (1982).

A. Penalty

According to Thompson, during the one month that he worked at the site prior to the accident, he was never disciplined or told that he was not doing his work properly. On the other hand, Greenawalt testified that he reprimanded Thompson because on the Friday before the accident, Thompson had "bumped hard into the berm causing the berm to actually move backwards." (Tr. 541-542). Based on my observation of the witnesses' demeanor, I accept the testimony of Greenawalt. According to McKendrick, in essence, in order for a Caterpillar 777 to go over the berm, the operator must accelerate. Within this context, I find that the low level of Respondent's negligence should mitigate to some degree, the penalty to be imposed. I find that a penalty of $200 is appropriate.

VI. Settlements

Subsequent to the hearing, on September 16, 1994, Petitioner filed Motions for Decision and Order Approving Settlement, pertaining to Docket Nos. PENN 93-500, PENN 94-7. Penn 94-8, and Order No. 3709750 (Docket No. PENN 93-171). A reduction in total penalties from $14,790 to $10,745 is proposed. I have considered the representations and documentation submitted in these cases, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. Accordingly, the Motions are GRANTED.

ORDER

It is Ordered that: (1) the following citations/orders be amended to non-significant and substantial: 3715434, 3708654, 3710040, and 3709734; (2) the following orders be amended to citations that are not the result of Respondent's unwarrantable

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7. The Motion filed September 16, 1994, concerns citation no. 3709736. A Motion to approve settlement concerning the remaining citation, No. 3710040, had been served on Respondent on May 5, 1994, and filed, via fax, on November 14, 1994.

failure: 3715434 and 3708654; (3) citation No. 3715432 be vacated; (4) citation No. 3490430 be dismissed; and (5) Respondent shall pay a total civil penalty of $37,224 within 30 days of this decision.

Avram Weisberger
Administrative Law Judge

Distribution:

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