

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 14, 2013

HIBBING TACONITE COMPANY,	:	CONTEST PROCEEDINGS
Contestant,	:	
	:	Docket No. LAKE 2013-231-RM
	:	Order No. 8665965; 12/15/2012
	:	
v.	:	Docket No. LAKE 2013-232-RM
	:	Order No. 8665968; 12/15/2012
	:	
	:	Docket No. LAKE 2013-233-RM
	:	Order No. 8665969; 12/15/2012
	:	
SECRETARY OF LABOR,	:	Docket No. LAKE 2013-234-RM
MINE SAFETY AND HEALTH	:	Order No. 8665970; 12/15/2012
ADMINISTRATION, (MSHA),	:	
Respondent,	:	Hibbing Taconite Company
	:	Mine ID: 21-01600
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. LAKE 2013-348-M
Petitioner,	:	A.C. No. 21-01600-312719
	:	
v.	:	
	:	
HIBBING TACONITE COMPANY,	:	
Respondent.	:	Mine: Hibbing Taconite Company

DECISION

Appearances: James Peck, CLR, Duluth Minnesota and Barbara Villalobos, Office of the Solicitor, Chicago, Illinois for Petitioner;
Dana Svendsen, Jackson Kelly, Denver, Colorado for Respondent.

Before: Judge Miller

These cases are before me on four notices of contest filed by Hibbing Taconite Company (“Hibbing”) and a petition for assessment of civil penalty filed by the Secretary of Labor (“Secretary”), acting through the Mine Safety and Health Administration (“MSHA”), against Hibbing, pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § § 815 and 820 (the “Mine Act”). Hibbing operates the Hibbing Taconite Company mine (the “mine”) located in St. Louis County, Minnesota. These cases involve twelve 104(a)

citations, four of which, along with four related 104(b) orders, remain for decision. The parties presented evidence and testimony at a hearing in Carlton, Minnesota on June 19, 2013.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hibbing Taconite Company is a large mine operator located in St. Louis County, Minnesota. The parties stipulated at hearing that Hibbing is engaged in mining operations that affect interstate commerce, is the owner and operator of the mine, is subject to the jurisdiction of the Act, and that the Commission has jurisdiction in this matter. Jt. Ex. 1. The parties further agreed that the penalties, as proposed, will not impair Hibbing's ability to continue in business. The history of assessed violations, Sec'y Ex. P12, accurately reflects the history of violations at this mine.

At hearing, the parties agreed to resolve eight of the alleged 104(a) violations. The settlement and proposed modifications are set forth at the end of this decision. Of the four citations remaining for hearing, three were issued to Hibbing for allegedly failing to keep areas of the mine clean. Specifically, the citations allege that the mine failed to clean up taconite pebbles that, in the past, had caused slip and fall injuries at the mine. The fourth violation involves the condition of a fan. At hearing, Hibbing indicated that it does not take issue with the fact of violation, or the designations of the gravity or negligence, for those four 104(a) violations. Rather, it contests the issuance of the 104(b) orders associated with each of the four 104(a) citations.

Each of the citations and orders was issued by MSHA inspector Thaddeus Sichmeller, who has been a mine inspector since 2003 and is also trained as an accident investigator. (Tr. 24-25). Sichmeller traveled to the mine on December 12, 2012 to conduct a general inspection. (Tr. 25). Prior to beginning the inspection he had a pre-inspection conference with Andrea Bakk, the head of the mine's safety department. (Tr. 5, 25-26). During the conference, and as a result of reviewing reports of the mine, Sichmeller expressed his concern regarding the mine's history of slips and falls. (Tr. 26); Sec'y Ex. P9. Further, Sichmeller discussed the several 104(b) orders that were issued during a previous inspection in 2008, daily closeout conferences, termination times, and explained that the mine must inform him of any mitigating factors that may justify an extension of time to terminate a citation. (Tr. 27).

The mine operates 24 hours a day, but has less of a crew in the evening and on weekends. (Tr. 53, 71, 103). Of the four 104(a) citations that remain at issue, Sichmeller issued one on December 12, 2012, and three on December 14, 2012. All four of the 104(b) orders were issued on December 15, 2012. Sichmeller was accompanied by someone from the safety department, as well as mine managers and a miner's representative, each day of the inspection.

a. Citation No. 8665946

On December 12, 2012 Inspector Sichmeller issued Citation No. 8665946 to Hibbing for an alleged violation of section 56.20003(a) of the Secretary's regulations. The cited standard requires that "[a]t all mining operations . . . [w]orkplaces, passageways, storerooms, and service

rooms shall be kept clean and orderly[.]” 30 C.F.R. § 56.20003(a). The citation described the alleged violative condition, in pertinent part, as follows:

The entire bottom level inclined walkway north side of the P2 pellet conveyor to the north wall was not being maintained in a clean orderly condition. Wet slurry, entangled wash down and fire hoses, along with round, cured, marbled-shaped taconite pellets were built up on the walkway, creating slip/trip fall hazards to persons accessing this area. This condition affected the floor from the 505 door eastward 50’, affecting heating units, operating pumps and access to the P2 conveyor. There were no persons in the area at the current time of the inspection, but footprints in the material indicate that persons were accessing this area prior to cleaning. These conditions were easily seen from the main travel route when accessing this area. Company has reported to MSHA multiple slip/fall accidents resulting in injury.

Sichmeller determined that an injury resulting in lost workdays or restricted duty was reasonably likely to occur, that the violation was significant and substantial, that one employee was affected, and that the negligence was moderate. A civil penalty in the amount of \$3,784.00 has been proposed for this violation.

The time for abatement was originally scheduled for 8:00 a.m., December 13, 2012, but was subsequently extended to 8:00 a.m., December 14, 2012, and then extended again to 8:00 a.m. December 15, 2012. On December 15, 2012, Section 104(b) Withdrawal Order No. 8665965, was issued at 1:58 p.m. The order states as follows:

Efforts were not being made to ensure the entire bottom level inclined walkway north side of the P2 pellet conveyor to the north wall was being maintained in a clean, orderly condition. Wet slurry, entangled washdown hoses, along with round, cured, marble-shaped taconite pellets were again built up on the walkway. Conditions at this time were as bad or worse than the original cited issuance. There were no persons observed conducting cleanup in this area at the present time for compliance to the original citation. MSHA has granted multiple extensions to the company for the company for compliance to the original citation.

The order was terminated on December 18, 2012, after the “entire affected area was cleaned at the P2 to north wall eastward from the 505 man door[.]”

Hibbing agrees that the original 104(a) citation accurately reflects a violation of the mandatory standard and that the violation was significant and substantial with moderate negligence. The mine takes issue with the 104(b) failure to abate order, Order No. 8665965. Hibbing argues that the order should have been further extended to allow the mine more time to abate the violative condition. Hibbing asserts that, at the time the underlying citation was issued

on December 12, 2013, it was not told when the citation needed to be abated by. Further, it argues that the area had been satisfactorily cleaned. Hibbing also avers that the inspector did not consider the degree of danger, the diligence of the mine in cleaning the area and the disruptive effect of the cleaning on all shifts. Finally, Hibbing argues that Sichmeller granted an extension of time to clean up an area subject to a separate citation based upon similar mitigating circumstances and abused his discretion in not granting an extension for abatement in this instance.

The pellet plant filters fine powder material, forms the material into small green balls, and prepares the pellets for transportation to customers. (Tr. 166). The facility is large with an annual production of 8 million tons. (Tr. 167). The plant consists of five levels with some sublevels. (Tr. 167). Some of the floors on the various levels are grates, while others are plates on top of grates. The floors on the bottom levels are cement. (Tr. 167). There is regular material spillage. Miners sweep and clean the spillage as they are able to do so. (Tr. 167). Most areas are hosed down to wash the material from the upper levels to the lower levels, including the lower level where Sichmeller issued this citation and order. (Tr. 168-16). When a citation is issued at the plant, the safety department prepares a report that is provided to Tim Angelo, the manager of the plant, and other managers. (Tr. 173-174). Angelo then determines how and when the abatement will be done. (Tr. 174). During nights and weekends a small operating crew of approximately nine miners is responsible for regular production duties as well as cleaning. (Tr. 172). According to Angelo, if he is not able to allocate the resources necessary to abate a citation, he discusses the matter with the MSHA inspector and asks for more time. (Tr. 174).

On December 12, 2012, Sichmeller was accompanied by Stephanie Bigelow, a safety representative at the mine, during his inspection. Sichmeller testified that, as they came in the 505 mandoor from outside of the pellet plant, he saw that the floor in area was “riddled in pellets,” that there were entangled hoses in the walkway, and that there was a slurry on the floor. (Tr. 28). As a result, Sichmeller issued Citation No. 8665946 to Bigelow. (Tr. 28). Sichmeller testified that the cited area, which was approximately 25 feet wide by 50 feet long, includes electrical equipment, pumps and heating units, all of which require maintenance and routine checks. (Tr. 29). The area requires labor for cleanup purposes. (Tr. 29). He explained that the taconite pellets on the floor are hard and marble shaped, and created a slip and fall hazard on the concrete floor in the area. (Tr. 30). Sichmeller testified that the mine had a history of slip and fall injuries. (Tr. 30-31); Sec’y Exs. P9-2 through P9-9. Given the extent of the violation, Sichmeller believed that it would take some time to clean the area. He understood that the mine worked 24 hours a day and, as a result, set the abatement time for the following morning, the 13th, at 8:00 a.m. (Tr. 36). Sichmeller recalled discussing the termination due date with Tim Angelo, one of the operations managers at the mine. (Tr. 36). While Angelo agreed that a discussion took place, he believed that it occurred at a later date, and not on December 12th. When Sichmeller returned to the pellet plant on the 13th, he observed miners cleaning the cited area and learned that they needed additional time to finish. (Tr. 37). As a result, he extended the abatement time until the next day, December 14th, to complete the task. (Tr. 37). Sichmeller testified, after reviewing his notes from December 13, 2012, that he spoke with Angelo about the conditions and was assured that work would be done to terminate the violation. (Tr. 85-86).

Sichmeller returned again on December 14th, saw that the mine had made some progress with the abatement since the prior day, but still needed additional time. (Tr. 38). As a result, he extended the time for abatement an additional day. (Tr. 38-39). Sichmeller testified that he routinely discusses the termination times with the mine during the preshift inspection conference and at the end of each day. (Tr. 39). Sichmeller testified that, on the 14th, he had a discussion with Angelo regarding how “rapid [his] termination times were being set” and that he was not going to extend the time beyond 8:00 a.m. the following day without seeing that efforts had been made to warrant an extension. (Tr. 69, 89). At some point during Sichmeller’s inspection of the mine, he had a conversation with Angelo where they discussed the 2008 inspection, during which other orders were issued, Angelo’s concern regarding the termination times being set, and what was needed to extend termination times. (Tr. 70).

Sichmeller returned on Saturday, December 15th and found that the conditions he cited on December 12th remained and that no one was working to complete the cleanup. (Tr. 40). He asked Tiara Marcus, a member of the mine’s safety department, why the area was not being cleaned. (Tr. 40). Marcus responded that there was minimal manpower on the weekend. (Tr. 40). No other explanation was offered. (Tr. 41-42). Sichmeller determined that nothing was being done that would allow him to further extend the abatement time. (Tr. 41). He saw no one in the area, nor any barricades or warnings to keep people out. (Tr. 42). Moreover, the daily reports from the mine’s safety department to management explained that the work needed to be done. (Tr. 42). The inspector believed that the area continued to pose a risk to miners and, as a result, he issued Order No. 8665965 for a failure to abate the violation. (Tr. 40). Sichmeller testified that he eventually terminated the order on December 18th after the mine cleaned the entire area. (Tr. 43-44). On cross-examination, Sichmeller agreed that termination times should be tailored to the conditions cited. (Tr. 71).

Bigelow, a safety representative at the mine, testified that she accompanied Sichmeller on his December 12, 2012 inspection, took notes, and issued a report summarizing the citations issued that day. (Tr. 93, 95); Hibbing Ex. E. The report was electronically mailed to all salaried employees at the mine after it was completed at the end of the inspection day. (Tr. 95-96, 102). Bigelow explained that, at the time the report was generated, the citations had been verbally issued, and that paper citations are routinely received the day following a verbal citation issuance. (Tr. 96). Bigelow testified that, at the time the citations were issued on December 12th, she was not told about any abatement times and did not include any abatement times in her report. (Tr. 96-97, 101). Bigelow testified that, normally, she is told a time for abatement and, if the mine is not able to meet the time, she discusses it with the inspector. (Tr. 97). Bigelow took photos of the area after Citation No. 8665946 was issued. (Tr. 99); Hibbing Ex. A. Since the citation was issued later in the day, no management employees were present at the pellet plant, so she called Jake Pusateri, the pellet plant operations manager, around 5:30 p.m., told him of violation in the pellet plant, and learned that he would oversee the cleanup. (Tr. 99-101).

Tiara Marcus, who has been a safety representative for Hibbing for two years, accompanied Sichmeller on his inspection beginning on December 13th. (Tr. 106, 110). After each inspection day, she, like Bigelow, put together a report that included pictures, summarized findings during the day, and listed the citations issued. (Tr. 108-109). Marcus explained that she did not believe that abatement times were adequately explained or communicated by Sichmeller.

(Tr. 109). Marcus testified that, several times, mine personnel tried to ask for more time to terminate the citations. (Tr. 109). In some instances the requests for more time were granted, but in other instances they were denied. (Tr. 110). During the inspection on December 13th, Marcus received the written citations from the previous day. (Tr. 112-113). Thereafter, Marcus accompanied the inspector to look at the cited area. Jeff Walters met the inspection group at the pellet plant. (Tr. 112). Marcus testified that, while cleaning the affected area was a big project, the mine had been working on it. (Tr. 113). According to Marcus, after arriving at the cited area, she asked for clarification regarding the extent of the area subject to the citation. (Tr. 114). Sichmeller gave further instruction about cleaning the area around the pump. (Tr. 114). It was her belief that, at that time, Sichmeller was asking the mine to clean an area larger than that included in the original citation. (Tr. 114). Marcus testified that Sichmeller did not give her a specific termination time in the closeout meeting on the 13th, but he did extend the termination time to the morning of the 14th.

Marcus testified that, on Friday, December 14th she was present when Sichmeller met with Tom Angelo. (Tr. 116). Angelo was concerned about the termination time given for this violation, as well as others. (Tr. 116). Even though the mine had been given one extension, the job was big and Angelo wanted to discuss the termination time. It was at this point that Marcus was given the written version of all of the citations issued on the 13th, including the extension of time given to abate the violation in the pellet conveyor room. (Tr. 116-117). The inspector and mine representatives had further discussions about abatement efforts, and the mine asked for more time because it was a big project to clean the pellet room. (Tr. 117). The mine also asked for an extension of time for several other violations. Marcus testified that the pellet conveyor room looked good on the 14th and, in her opinion, the cleanup was complete. (Tr. 120). However, the inspector disagreed and issued another extension. (Tr. 120). There is no evidence that Marcus told the inspector that the condition had been abated but had recurred.

The mine was issued additional citations on December 14th. The inspection on the 14th concluded after 3:30 p.m., the time when many crews leave. According to Marcus, after 3:30, there is a skeleton crew of about six to eight miners. (Tr. 128-129). Prior to leaving for the day on the 14th, Sichmeller discussed the citations with Marcus and others. Marcus spoke to several managers about coordinating and getting the citations abated. (Tr. 129-130). She testified that the mine “knew [it] had a lot of work to do,” but she had no idea what was going to happen or when it was due as there was “no specific discussion” of abatement times. (Tr. 129-130). Marcus admitted that she failed to ask questions about how soon the citations must be terminated, but wrote her report for the day, Hibbing Ex. G, which did not include abatement times, emailed it to Hibbing’s salaried employees, and went home. (Tr. 129-130).

Marcus testified that Inspector Sichmeller returned to the mine on Saturday, December 15th and waited for Marcus to arrive. (Tr. 131-132). She explained that, prior to beginning that day’s inspection, he provided paper copies of the citations from the previous days’ inspections, as well as written extensions for a number of the earlier violations. (Tr. 133). Marcus testified that, after reviewing the conditions in the pellet plant, the inspector issued the 104(b) failure to abate order. Marcus was of the opinion that the cleanup was complete, and the citation was going to be terminated at that the time, but the inspector disagreed. (Tr. 136, 137). Moreover, she did not understand what the 104(b) order was, as she has never received one. Marcus then

questioned Sichmeller about the order and he explained the purpose of the order. (Tr. 136-138). Marcus testified that, on the 15th, while there were a few hoses on the ground, the floor was clean and dry, and, in her opinion, there was no hazard at that time. (Tr. 137).

Tim Angelo, the pellet plant operations manager, testified that he met with Sichmeller on December 14th to discuss his concerns over termination times, resources available, and the areas he had to cover. (Tr. 175). The discussion centered around the fact that the mine needed more time to abate the violations. (Tr. 175). He explained to Sichmeller that they had men assigned and he was doing what he could with the resources he had available. (Tr. 175). He understood that the inspector didn't believe the mine was using its time wisely, but the inspector told him that if the mine shows effort or some improvement then he would be willing to give extensions of time. (Tr. 176). Sichmeller told Angelo that he sets the abatement time for the following morning so that the mine will work diligently to correct the violation. (Tr. 176). However, Angelo testified that Sichmeller told him that if the mine presents some valid reason for not completing the task, he may extend the time. (Tr. 177). After the meeting, Sichmeller continued his inspection. (Tr. 177).

Angelo testified that, on Saturday, December 15th, he received a call from Marcus about the orders the mine received for not abating certain violations. (Tr. 177-178). Angelo went to the mine and learned that it had received four orders and some extensions of time on others. (Tr. 178). In response, Angelo looked at the resources available and came up with a plan, called out whoever he could call out, and used the operational crew to work some hours of overtime on the 15th. (Tr. 179-180). Angelo opined that the subject area is not a normal walkway and it is the mine's policy for miners to clean their way in if they have to reach certain areas. (Tr. 188-189). Moreover, because the area was on the bottom level that receives all of the debris and pellets from the above levels, the mine has a policy and signs warning miners to watch their footing and clean their way in. (Tr. 188-189). Angelo testified that he prioritizes his abatement efforts based upon the danger posed to the miners by the violative condition. In this instance he allocated some resources to clean the area when the citation was originally issued on December 12th. (Tr. 189-190).

In *Energy West Mining Co.*, 18 FMSHRC 565 (Apr. 1996), *aff'd*, 111 F.3d 900 (D.C. Cir. 1997), the Commission set forth the analytical framework for contesting a 104(b) order. The Commission stated as follows:

[T]he operator may challenge the reasonableness of the time set for abatement or . . . the Secretary's failure to extend that time. *Clinchfield Coal Co.*, 11 FMSHRC 2120, 2128 (November 1989), *citing Old Ben Coal Co.*, 6 IBMA 294, 306-07 (1976); *U.S. Steel Corp.*, 7 IBMA 109, 116 (1976); *Youghiogheny & Ohio Coal Co.*, 8 FMSHRC 330, 338-39 (March 1986) (ALJ). Section 104(b) of the Mine Act provides:

If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) that a violation described in a citation . . .

has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring . . . all persons . . . to be withdrawn from . . . such area

30 U.S.C. § 814(b). The Act does not address the extent of an inspector's inquiry in making the determination of whether abatement time should be extended. Nor is the extent of inquiry addressed in legislative history. *See* S. Rep. No. 181, 95th Cong., 1st Sess. 30 (1977), *reprinted in* Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 618 (1978); H.R. Rep. No. 563, 91st Cong., 1st Sess. 8, 31 (1969), *reprinted in* Senate Subcommittee on Labor, Committee on Labor and Public Welfare, 94th Cong., 1st Sess., Part I *Legislative History of the Coal Mine Health Safety Act of 1969*, at 1038, 1061 (1975) ("*Coal Act Legis. Hist.*"); S. Rep. No. 411, 91st Cong., 1st Sess. 37, 89, *reprinted in Coal Act Legis. Hist.* at 163, 215.

The Commission has recognized that the "Secretary . . . possesses enforcement discretion to extend the time for abatement if [he] believes it reasonable" *Clinchfield*, 11 FMSHRC at 2132. Therefore, in reviewing an operator's challenge to the Secretary's failure to extend abatement time, the Commission considers whether the inspector abused his discretion in issuing the order. The Commission has noted that "abuse of discretion" has been found when "there is no evidence to support the decision or if the decision is based on an improper understanding of the law." *Utah Power & Light Co.*, 13 FMSHRC 1617, 1623 n.6 (October 1991), *quoting Bothyo v. Moyer*, 772 F.2d 353, 355 (7th Cir. 1985).

18 FMSHRC 565, 568-569 (Apr. 1996).

I conclude that substantial evidence supports the inspector's determination that the time for abatement should not have been extended any longer and that the 104(b) order was properly issued. The inspector did not abuse his discretion prior to determining that the period of time for the abatement should not be further extended. Sichmeller considered the fact that, during the abatement period, little was done to abate the condition. Extensions were given when effort was shown, but, on the 15th, when Sichmeller went back to check on the progress of the abatement, no one was working in the area and the condition continued to exist. Sichmeller credibly testified that, while he gave the mine ample notice of the various abatement times, his primary

concern when deciding to not grant another extension was the safety of the miners, and, here, the hazard, and risk of injury, continued to exist. (Tr. 43, 86). Although, Marcus said she didn't have a specific abatement time, she also failed to ask for one, even after the time for completion had twice been extended. It is important that the mine personnel seek clarification if they do not understand the time set for abatement, yet Marcus, who was a relatively new employee, failed to do so. Certainly by the time the inspector spoke with Angelo on December 14th the time was clear. Nevertheless, the mine still had not abated the condition by the 15th. Sichmeller explained that, with regard to this particular condition, he was given no reason or explanation to justify extending the termination beyond the 15th. In his opinion, the number of persons working on the weekend is not a mitigating factor that justifies extending the time for abatement, as it is the mine's responsibility to see that sufficient workers are available to terminate the violations. I credit the inspector's testimony as to the condition of the pellet room on each of his visits. Moreover, I credit his testimony that he discussed abatement times at the end of each inspection day with a representative of the mine operator. The testimony of Hibbing's witnesses leads me to believe that the mine wants to abate on its schedule, and does not like the inspector requiring abatement outside of that schedule. Finally, I find that Sichmeller had a clear understanding of the law. He gave the company an original termination date, and when he learned that they could not complete the abatement in that amount of time, he twice extended the time for doing so. Sichmeller gave due consideration to the safety of the miners in setting a time, in extending the time, and in finally issuing an order for a failure to abate. Based upon the five penalty criteria, and the mine's failure to abate the violation in good faith, I assess a penalty of \$4,000.00.

b. Citation No. 8665957

On December 14, 2012 Inspector Sichmeller issued Citation No. 8665957 to Hibbing for an alleged violation of section 56.20003(b) of the Secretary's regulations. The cited standard requires that "[a]t all mining operations . . . [t]he floor of every workplace shall be maintained in a clean and, so far as possible, dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places shall be provided where practicable[.]" 30 C.F.R. § 56.20003(b). The citation described the alleged violative condition, in pertinent part, as follows:

The walkways of the scrubber pump area were not being maintained in a clean condition. The area was found with a build up of wet slippery slurry, and cured taconite pellets[.] The north walkway was found with a build up of slurry ranging of up to ½ inch in depth for a length of about 40 feet down the width of the walkway. The walkway on the east side was found with a build up of cured taconite pellets covering the access to the east pump the pump was not in operation at the time of the inspection. Upon the north walkway there were two portable electrical disconnect units, one operating a portable heating setting inside the slurry build up. Reportedly the condition of the slurry appeared to have been created from washing the above levels. There were not [sic] person currently working in the immediate area at the time of the inspection.

Sichmeller determined that an injury or illness was unlikely to occur, but if one did occur it could reasonably be expected to result in lost workdays or restricted duty, that the violation was not significant and substantial, that one employee was affected, and that the negligence was moderate. A civil penalty in the amount of \$897.00 has been proposed for this violation.

The time for abatement was originally scheduled for 8:00 a.m., December 15, 2012. On December 15, 2012, Section 104(b) Withdrawal Order No. 8665970, was issued at 2:43 p.m. The order states as follows:

No efforts were being made for cleanup to the walkways of the scrubber pump area. The area was still found in the same condition as the originally cited condition. There were no persons observed in this area conducting cleanup measures, and not additional warnings or barricades in the affected area.

The order was terminated on December 17, 2012, after the “affected areas were cleaned at the scrubber pump area[.]”

The mine agrees that the original 104(a) citation accurately reflects a violation of the mandatory standard and that the negligence and gravity were properly assessed. The mine takes issue with the 104(b) failure to abate order, i.e., Order No. 8665970. Therefore, I affirm the violation as issued and address the 104(b) order issued in conjunction with this citation.

Citation No. 8665957 was issued on December 14, 2012. The cited condition was similar to the condition addressed in Citation No. 8665946, discussed *supra*, which was issued on December 12, 2012 at the conveyor area. The area addressed by the instant citation includes the walkways near the scrubber pump. Sichmeller testified that he observed taconite pellets in depths of two to three inches, and wet slurry buildup on the floor, about ½ inch in depth, for approximately 40 feet. (Tr. 44, 45). The subject area did not include the entire walkway, but the cited conditions still presented a slip, trip and fall hazard on the concrete floor. (Tr. 45). Sichmeller explained that Sec’y Exs. P3-6 through P3-9 are photos that depict the inspector’s observation of the slurry on the floor and the taconite pellets near the electrical disconnect site. (Tr. 45-46). Sichmeller testified that, while no one was working in the area at that time, a number of people work and travel in the area to conduct maintenance, daily workplace examinations, and to reach the electrical disconnect switches. (Tr. 45, 49). In addition, the area also contains pumps. Based on his observations, Sichmeller issued Citation No. 8665957 and set the termination time for 8:00 a.m. on December 15, 2012. (Tr. 49). Sichmeller testified that, during the closeout conference at the end of the day on the 14th, he advised the mine personnel of the time for termination. (Tr. 49-50).

When Sichmeller returned on the 15th, nothing had been done to abate the violation. (Tr. 51). As a result, he issued Order No. 8665970 for a failure to abate the violation. (Tr. 50-51). According to Sichmeller, the condition had not changed, no one was in the area working on it, and there was no warning or barricade in place. (Tr. 51, 52). According to Sichmeller, the mine’s inspection report again indicated that work needed to be done, and Marcus was upset that

nothing had been accomplished and was unable to explain why that was the case. (Tr. 51). Prior to issuing the order, Sichmeller had a discussion with the mine's safety department, who gave him no reason why the work had not been completed, nor any mitigating circumstance that would warrant an extension of time. Sichmeller determined that an extension was not warranted, given that a hazard continued to exist and no abatement effort was evident. (Tr. 52). The debris in the area, including the pellets, was extensive and cleanup continued until December 17th, however, in Sichmeller's view, the condition could have been easily abated in one day. On cross-examination, Sichmeller acknowledged that cleaning of areas above the cited area could affect the cited area. (Tr. 76-77). Sichmeller testified that he eventually terminated the order on the 17th after the mine cleaned the subject area. (Tr. 52-53).

Marcus, who was accompanying Sichmeller at the time this citation was issued on the 14th, testified that she was not given a "specific abatement time" when the citation was issued. However, she did not ask for a time or clarify what was expected of the mine even though Sichmeller offered her the opportunity to do so. Marcus testified that it was her understanding that abatement efforts began immediately after the citation was issued. (Tr. 122-123). Sichmeller had told Angelo earlier on the 14th, the day the citation was issued, that the termination time for all citations issued that day was 8:00 a.m. the following morning. Marcus also took photos of the area and, when she returned to the area the following day with the inspector, she believed it had been cleaned adequately. (Tr. 148-149). According to Marcus, Hibbing Ex. B shows a slightly different angle and the walkway is clear. However, the photo does not show the entire area cited. The area had not been entirely cleaned, but Marcus testified that there was a reduction in pellets and the floor was wet, which was an indication that the mine had been working on it. (Tr. 150). Marcus believed that the worker had been pulled off to work on another area but the abatement was partially done. Marcus recalled that she had spoken to the inspector the previous day about abatement times and the lack of progress on some areas. (Tr. 143). Angelo had explained on the previous day that the problem was with finding the resources to do the work on the weekend. Marcus testified that she believed the inspector was too vague when he explained on Friday that he wanted the termination time to be short so they would keep working on it. (Tr. 162).

Thomas Paul Marturano, the maintenance section manager at the pellet plant at the time of the inspection, accompanied the inspector after lunch on December 14th. (Tr. 191-193). When observing the cited area, Marturano testified that he believed that the walkway was clear, although there was material on the floor. (Tr. 194-195). He opined that a miner may access the cited area only once each shift in order to attend to the furnace, maintain the scrubber pump or do an inspection. (Tr. 195). He characterized this area as a "lower priority" because not many people work or travel through the area. (Tr. 196).

Derek Gouldin, the operations supervisor on call that weekend, testified that he participated in a pre-inspection conference on the 15th with Sichmeller, however, he does not recall any discussion of abatement time. (Tr. 207). He testified that the subject area was the same area that was addressed in another citation, and that the same mitigating factors existed, including that the area was wet because the area above or adjacent had been recently hosed down. (Tr. 202, 215). Gouldin explained that, on December 15, 2012, Sichmeller extended the abatement times for a number of violations and believed that Sichmeller should have extended

the abatement times for even more citations because there were several cited conditions that were similar, and the reasons for not completing the abatement in a timely matter were the same. Gouldin noted that, with regard to the housekeeping citations, debris falls from above as they clean those areas. (Tr. 212-213). He testified that, on the weekend, cleaning of the upper levels doesn't affect travel in the lower levels because no one is there. Finally, he explained that, in the closeout conference that day, it was safe to assume that the abatement times for all citations from there on out would be 8:00 a.m. the following day. (Tr. 216).

I conclude that substantial evidence supports the inspector's determination that the time for abatement should not have been extended and that the 104(b) order was properly issued. The inspector did not abuse his discretion prior to determining that the period of time for the abatement should not be extended. Sichmeller considered the fact that, during the abatement period, little was done to abate the condition. The mine was aware that the time for abatement on Saturday was 8:00 a.m., however, the area was not re-inspected until well after that time when Sichmeller observed that little, if anything had changed. While Marcus disagreed and testified that there was much to clean up, and that some work had been done, I credit Sichmeller's testimony that he observed little evidence of progress in the cleanup. Sichmeller credibly testified that he had given the mine ample notice of the various abatement times, and that, in refusing to grant an extension, his primary concern was for the safety of miners. (Tr. 52-53, 88). Although Marcus testified that she was not specifically told of an abatement time, she agreed that she failed to ask for further explanation. Certainly, given Sichmeller's conversation with Angelo on the morning of the 14th, the time was clear, and still was not met by the 15th. Sichmeller explained that he was given no reason or explanation to extend the termination in this instance and that the number of persons working on the weekend is not a mitigating circumstance. (Tr. 88). It is the mine's responsibility to see that sufficient workers are available to terminate the violations. I credit the inspector's testimony as to the condition of the area as well as his testimony that he discussed abatement times at the end of each inspection day with a representative of the mine operator. Finally, I find that Sichmeller had a clear understanding of the law. He gave the company a termination date and time, and gave due consideration to the safety of the miners in setting that time and in finally issuing an order for a failure to abate. Based upon the five penalty criteria, and the mine's failure to abate the violation in good faith, I assess a penalty of \$1,000.00.

c. Citation No. 8665959

On December 14, 2012 Inspector Sichmeller issued Citation No. 8665959 to Hibbing for an alleged violation of section 56.20003(a) of the Secretary's regulations. The cited standard requires that "[a]t all mining operations . . . [w]orkplaces, passageways, storerooms, and service rooms shall be kept clean and orderly[.]" 30 C.F.R. § 56.20003(a). The citation described the alleged violative condition, in pertinent part, as follows:

The walkway leading to the electrical disconnect was not being maintained in a clean condition to the operating indurating vent unit G. The access was completely covered with round, cured taconite pellets to a maximum depth of about four inches. This condition creates slip/fall hazards to persons accessing this area.

This condition was easily seen from the main travel route and was the second violation today for this type of condition.

Sichmeller determined that an injury or illness was unlikely to occur, but, if one occurred it could reasonably be expected to result in lost workdays or restricted duty, that the violation was not significant and substantial, that one employee was affected, and that the negligence was moderate. A civil penalty in the amount of \$764.00 has been proposed for this violation.

The time for abatement was originally scheduled for 8:00 a.m., December 15, 2012. On December 15, 2012, Section 104(b) Withdrawal Order No. 8665968 was issued at 2:25 p.m. The order states as follows:

No efforts were being made to clean the walkway leading up to the electrical disconnect of the operating indurating vent unit G. The conditions of round, cured taconite pellets to a depth of up to 4 inches was still in this area. There were no additional warnings or barricades in the area.

The order was terminated on December 16, 2012, after, “[t]he walkway was cleared, pellets were removed in front of the electrical disconnect for indurating vent unit G[.]”

The mine agrees that the original 104(a) citation accurately reflects a violation of the mandatory standard and that the negligence and gravity were properly assessed. The mine takes issue with the 104(b) failure to abate order, i.e., Order No. 8665968. Therefore, I affirm the violation as issued and address the 104(b) order issued in conjunction with this citation.

After speaking with Marcus and Angelo on the morning of December 14th about abatement issues, Sichmeller issued Citation No. 8665959 for a violative condition identical to those discussed above; an accumulation of taconite pellets on a walkway. (Tr. 54). Sichmeller found that the area was accessed only a couple of times per day, but that, when it was accessed, those miners were exposed to slip and fall hazards. (Tr. 54). The subject area, which was smaller than the two areas discussed *supra*, was approximately eight by eight feet with accumulations of pellets reaching depths of three to four inches. (Tr. 54). Sichmeller explained that mine personnel doing routine checks, electrical personnel that need to access the disconnect, and maintenance personnel working on the unit all must travel the area during any shift. (Tr. 55). Sichmeller testified that he communicated the termination date just as he always does, during the daily conference meetings with the mine in which he goes over every citation. (Tr. 58). Sichmeller testified that Sec’y Exs. P5-3 and P5-4 depict the area and show an accumulation of pellets near the electrical disconnect in the center of the first photo. (Tr. 55). He explained that there was no apparent change in the condition of the areas in the second photo, which was taken the following day, the 15th. (Tr. 56). Moreover, on the second day, there were no warnings or barricades. (Tr. 56). As a result, Sichmeller issued Order No. 8665968 for a failure to abate the violation. (Tr. 57-58). He based the issuance on his observation that, on the 15th, no one was working in area, it was not barricaded, and that this was a quick job that should have been easily completed and taken no longer than five minutes to do so. (Tr. 57-60). He explained that, again, the mine’s inspection report showed that work needed to be done, yet the

mine offered no mitigating factors or reasons why the cleanup had not been completed. (Tr. 57-59). The citation was eventually terminated on the 16th after the cleanup had been completed. (Tr. 59).

Marcus testified that abatement efforts began immediately after the citation was issued, but stated that she did not know of an abatement time until the day following the issuance when the paper was issued. (Tr. 125) Even though she was aware of Sichmeller's conversation with Anglo on the 14th and was told that the abatement time for all citations issued on the 14th would be the following morning.

Marturano, who was with the inspector when the citation was issued, observed pellets in front of disconnect, but believed the area could be reached without stepping on the material. (Tr. 196-197). He testified that the walkway is cleaned by miners who may be in the area to do maintenance on a piece of equipment, and pellets build up on the sides of the walkway. (Tr. 197). However, since the area is not accessed often, it is not a priority to clean. (Tr. 197). Marturano, like the other witnesses for the mine, said he was not told an abatement time.

Hibbing again argues that it was not specifically told of the abatement time. I conclude that substantial evidence supports the inspector's determination that the time for abatement should not have been extended and that the 104(b) order was properly issued. The inspector did not abuse his discretion prior to determining that the period of time for the abatement should not be extended. Sichmeller considered the fact that, during the abatement period, little was done to abate the condition. While Marcus disagreed and testified that there was much to clean up, and that some work had been done, I credit Sichmeller's testimony that he observed little evidence of progress in the cleanup. Sichmeller credibly testified that he had given the mine ample notice of the various abatement times, and that, in refusing to grant an extension, his primary concern was for the safety of miners. Although Marcus testified that she was not specifically told of an abatement time, she agreed that she failed to ask for further explanation. Certainly, given Sichmeller's conversation with Angelo on the morning of the 14th, discussed *supra*, the time was clear, and still was not met by the 15th. Sichmeller explained that he was given no reason or explanation to extend the termination in this instance and that the number of persons working on the weekend is not a mitigating circumstance. It is the mine's responsibility to see that sufficient workers are available to terminate the violations. I credit the inspector's testimony as to the condition of the area and that he discussed abatement times at the end of each inspection day with a representative of the mine operator. Finally, I find that Sichmeller had a clear understanding of the law. He gave the company a termination date and time, and gave due consideration to the safety of the miners in setting that time and in finally issuing an order for a failure to abate. Based upon the five penalty criteria, and the mine's failure to abate the violation in good faith, I assess a penalty of \$1,200.00.

d. Citation No. 8665960

On December 14, 2012 Inspector Sichmeller issued Citation No. 8665960 to Hibbing for an alleged violation of section 56.14100(b) of the Secretary's regulations. The cited standard requires that [d]efects on any equipment, machinery, and tools that affect safety shall be

corrected in a timely manner to prevent the creation of a hazard to persons. 30 C.F.R. § 56.14100(b). The citation described the alleged violative condition, in pertinent part, as follows:

The outer protective sheeting on the line number 2 windbox exhaust fan was not being maintained to prevent the creation of a hazard to persons. The sheeting was found deteriorated and loose. This condition creates a hazard to persons accessing this area. There were no persons currently working in the area and reportedly this area is accessed as needed for maintenance. Other fans in the area were found with this type of sheeting removed with spray-on insulation covering them. The complete deterioration of the material indicates that this condition has been present for some time.

Sichmeller determined that an injury or illness was unlikely to occur, but, if one occurred it could reasonably be expected to result in lost workdays or restricted duty, that the violation was not significant and substantial, that one person was affected, and that the negligence was moderate. A civil penalty in the amount of \$971.00 has been proposed for this violation.

The time for abatement was originally scheduled for 8:00 a.m., December 15, 2012. On December 15, 2012, Section 104(b) Withdrawal Order No. 8665969 was issued at 2:33 p.m. The order states as follows:

No efforts were being made to correct the outer protective sheeting on the line #2 [wind]box exhaust fan. The loose, deteriorated sheeting was still hanging in the same condition as the originally cited condition. There were no persons working in the area and there were no additional warnings or barricades for the conditions created.

The order was terminated on December 17, 2012, after, “the deteriorated sheeting was removed from the Line 2 windbox fan area[.]”

The mine agrees that the original 104(a) citation accurately reflects a violation of the mandatory standard and that the negligence and gravity were properly assessed. The mine takes issue with the 104(b) failure to abate order, i.e., Order No. 8665969. Therefore, I affirm the violation as issued and address the 104(b) order issued in conjunction with this citation.

While conducting his inspection on December 14th, Sichmeller observed that the Line No. 2 windbox exhaust fan was not being maintained. (Tr. 61). Specifically, the fan had deteriorated to the point that the protective sheeting was flapping in the wind and sharp edges existed (Tr. 61, 64). Sichmeller believed that parts could fall off and strike anyone in the area. (Tr. 61, 64). There was a walkway leading to the bearings and shaft for the windbox located below the fan. (Tr. 62). Sichmeller testified that, while there is limited access to the area, the condition created a hazard which should have been easily repaired. (Tr. 64). As a result, Sichmeller issued Citation No. 8665960 and gave the mine until 8:00 a.m. on the 15th to correct

the condition. (Tr. 64). Sichmeller discussed the time for abatement with mine personnel at the end of the day on the 14th, and again discussed it the following morning. (Tr. 64). When Sichmeller returned the on the 15th, there was no one working to abate the violative condition, and the fan was in the same condition that he observed on the prior day. (Tr. 65). Sichmeller asked Marcus why the fan had not been repaired or the area barricaded, and, according to Sichmeller, Marcus did not know why it had not been corrected. (Tr. 65). As a result, he issued Order No. 8665969 for a failure to abate the condition. Sichmeller explained that, in determining termination times, and whether to issue a 104(b) order or extension, he looks first to the health and safety of the miners, and not the staffing of company. While he will not change termination times, he will grant extensions if warranted. His concern with this mine was getting it started abating the conditions. Sichmeller believed that he was fair with the mine, and granted extensions to abate many of the roughly 100 citations he issued during the inspection. (Tr. 89-90).

Marcus testified that she was present during the issuance of this citation and took photographs of the area. (Tr. 126); Hibbing Ex. D. She recalled that, immediately after the citation was issued, she removed two pieces of the sheeting that were flapping and believed that she had abated the violation at that point. (Tr. 128, 146). However, Sichmeller stated that the sharp edges had not been addressed. (Tr. 146). Marcus again testified that she was not made aware of the intended abatement time until the following day, December 15th. (Tr. 128). The citation was eventually terminated by Sichmeller on the 17th after the mine removed the loose sheeting from the windbox and took steps to correct the sharp edges that were exposed. (Tr. 66). Sichmeller testified that Sec'y Exs. P8-8 and P8-9 depict the termination on December 17th with the sheeting removed, and the sharp edges grounded down.

Marturano testified that the fan is not accessed very often, and, generally, when an inspection is done, the attendant just walks by the area, roughly 25 to 30 feet away, without actually accessing the pedestal where the flapping metal was hanging. (Tr. 198). However, he acknowledged that a miner doing maintenance would have to access the area. (Tr. 199). Marturano testified that abatement of the condition began immediately when someone went up on the pedestal and took down the flapping sheet metal. (Tr. 199). However, he received no information on abatement time at that point. (Tr. 199). He explained that the inspection on the 14th ended after 3:00, and most day shift miners were gone, while just an operating crew remained. (Tr. 199-200). Marturano testified that, during the meeting at the end of the day, there was a brief discussion regarding the citation issued that day, but there was no mention of abatement times. (Tr. 200). After MSHA left, he had a short discussion with Marcus about it being odd that no termination time was given. (Tr. 101). Finally, he went to talk to the operations supervisor to tell them about the citations and what areas had to be cleaned. (Tr. 202). Marturano testified that there were MSHA items written in the book, however, he didn't know what exactly was going on to abate this particular citation. (Tr. 202).

Again the company argues that they were not told of the time for abatement, but I find this argument disingenuous as everyone agreed that Anglo was told on the morning of the 14th that the conditions, including this one, must be abated by the following morning. The mine further argues that the fan was not accessed often and therefore not a hazard to miners, and so the termination time could safely be extended. I conclude that substantial evidence supports the

inspector's determination that the time for abatement should not have been extended and that the 104(b) order was properly issued. The inspector did not abuse his discretion prior to determining that the period of time for the abatement should not be extended. Sichmeller considered the fact that, during the abatement period, little was done to abate the condition. While Marcus disagreed and testified that she had removed the sheeting and work had been done, I credit Sichmeller's testimony that he observed little evidence of progress. Sichmeller credibly testified that he had given the mine ample notice of the various abatement times, and that, in refusing to grant an extension, his primary concern was for the safety of miners. Given Sichmeller's conversation with Angelo on the morning of the 14th, discussed *supra*, the time for abatement was clear, and still was not met by the 15th. Sichmeller explained that he was given no reason or explanation to extend the termination in this instance and that the number of persons working on the weekend is not a mitigating circumstance. It is the mine's responsibility to see that sufficient workers are available to terminate the violations. I credit the inspector's testimony as to the condition of the fan and that he discussed abatement times at the end of each inspection day with a representative of the mine operator. Finally, I find that Sichmeller had a clear understanding of the law. He gave the company a termination date and time, and gave due consideration to the safety of the miners in setting that time and in finally issuing an order for a failure to abate. Based upon the five penalty criteria, and the mine's failure to abate the violation in good faith, I assess a penalty of \$1,200.00.

e. Settled Citations

At hearing, the parties filed a partial settlement agreement for the eight remaining violations. Hibbing has agreed to accept Citation Nos. 8665947 and 8665950 as issued and pay the originally proposed penalties for such.

Hibbing represents that, with regard to Citation No. 8665948, it would have argued that the spills were localized and the travelways were large with the spills being easily bypassed. It further represents that it would have argued that the cause of the spill was noted and they had plans for repairs. The Secretary has agreed to modify Citation No. 8665948 from "moderate" to "low" and accept a reduced penalty of \$1,530.00.

Hibbing represents that, with regard to Citation No. 8665949, it would have argued that the area was posted with a sign stating "Clean area prior to entry"; also the area has limited access and is only accessed for maintenance when the equipment is shut down. The Secretary has agreed to modify Citation No. 8665949 from "high" to "moderate" negligence and accept a reduced penalty of \$334.00.

Hibbing represents that, with regard to Citation No. 8665953, it would have argued that the main walk way was clear in the main travel way and fire extinguisher could be easily reached and there was also a fire hose nearby. The Secretary has agreed to modify Citation No. 8665953 from "moderate" to "low" and accept a reduced penalty of \$150.00.

Hibbing represents that, with regard to Citation No. 8665956, it would have argued that the cleanup of the spill had been started recently in this area and spillage was minimal on the

main travel way outside of the pillars. The Secretary has agreed to modify Citation No. 8665956 from “moderate” to “low” and accept a reduced penalty of \$1,530.00.

Hibbing represents that, with regard to Citation No. 8665963, it would have argued that the cited spillage was minimal and was located under the tail pulley with the main travel way being clear. The Secretary has agreed to modify Citation No. 8665963 from “reasonably likely” to “unlikely,” delete the significant and substantial designation, and accept a reduced penalty of \$745.00.

Hibbing represents that, with regard to Citation No. 8665971, the cited condition is more accurately described as a violation of 30 C.F.R. § 56.14110. The Respondent asserts the taconite pellet conveyance was spilling pellets causing the pellets to fall to the work area below. The Secretary has agreed to modify Citation No. 8665971 to reflect a violation of 30 C.F.R. § 56.14110, and accept a reduce penalty of \$1,657.00.

I accept the representations and the modifications of the parties as set forth in the motion for partial settlement. I have considered the representations and documentation submitted, find that the modifications are reasonable and I conclude that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Act. The motion to approve partial settlement is **GRANTED**.

II. PENALTY

The principles governing the authority of Commission administrative law judges to assess civil penalties de novo for violations of the Mine Act are well established. Section 110(i) of the Mine act delegates to the Commission and its judges “authority to assess all civil penalties provided in [the] Act.” 30 U.S.C. § 820(i). The Act delegates the duty of proposing penalties to the Secretary. 30 U.S.C. §§ 815(a), 820(a). Thus when an operator notifies the Secretary that it intends to challenge a penalty, the Secretary petitions the Commission to assess the penalty. 29 C.F.R. § 2700.28. The Act requires, that “in assessing civil monetary penalties, the Commission [ALJ] shall consider” six statutory penalty criteria:

- (1) The operator’s history of previous violations, (2) the appropriateness of such penalty to the size of the business of the operator charged, (3) whether the operator was negligent, (4) the effect on the operator’s ability to continue in business, (5) the gravity of the violation, and (6) the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

30 U.S.C. § 820(i). The history of assessed violations was admitted into evidence and shows a reasonable history for this mine. The mine is a large operator. The operator has stipulated that the penalties as proposed will not affect its ability to continue in business. Moreover, Hibbing has agreed to accept the gravity and negligence as assessed. Hibbing, as discussed in detail *supra*, failed to demonstrate good faith in abating the four subject 104(a) citations. The penalty amounts for the citations addressed at hearing and in the motion for partial settlement are as follows:

<u>Citation/Order No.</u>	<u>Originally Proposed Penalty</u>	<u>Final Penalty</u>
8665946	\$3,784.00	\$4,000.00
8665947	\$334.00	\$334.00
8665948	\$3,405.00	\$1,530.00
8665949	\$1,111.00	\$334.00
8665950	\$873.00	\$873.00
8665953	\$334.00	\$150.00
8665956	\$3,405.00	\$1,530.00
8665957	\$897.00	\$1,000.00
8665959	\$764.00	\$1,200.00
8665960	\$971.00	\$1,200.00
8665963	\$3,689.00	\$745.00
8665971	<u>\$4,329.00</u>	<u>\$1,657.00</u>
Total	\$ 23,896.00	\$ 14,553.00

III. ORDER

Based on the criteria in section 110(i) of the Mine Act, 30 U.S.C. § 820(i), I assess the penalties listed above for a total penalty of \$14,553.00. Hibbing Taconite Company is hereby **ORDERED** to pay the Secretary of Labor the sum of \$14,553.00 within 30 days of the date of this decision.

/s/ Margaret A. Miller
Margaret A. Miller
Administrative Law Judge

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