FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 26, 2020

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION, (MSHA), Petitioner, v. BRAGG CRANE SERVICE, Respondent.	CIVIL PENALTY PROCEEDING Docket No. WEST 2019-0303 A.C. No. 26-00803-487971 6KB Mine: Spanish Springs Pit #6

DECISION AND ORDER

Appearances: Sonya P. Shao, U.S. Department of Labor, Office of the Solicitor, 350 S. Figueroa Street, Suite 370, Los Angeles, CA 90071

Perry P. Poff, Donell, Melgoza & Scates LLP, 3300 Sunset Boulevard, Suite 110, Rocklin, CA 95677

Before: Judge Simonton

I. INTRODUCTION

This case is before me on a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration, against Bragg Crane Service ("Bragg" or "Respondent"), pursuant to the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 801.[1] This case involves one Section 104(a) citation alleging a violation of 30 C.F.R. § 56.16009. The Secretary proposed a penalty of **$2,615.00.** The citation was designated as significant and substantial (S&S), highly likely to result in a fatal injury, and involving high negligence on the part of the Respondent.

The parties presented testimony and documentary evidence at a hearing held in Reno, Nevada on October 23, 2019. MSHA Inspector Kimberly Hakala testified for the Secretary. Bragg mechanic/oiler Kyle McPartland, crane operator Zachary Cramer, and branch manager Dean Stone testified for Respondent. After fully considering the testimony and evidence presented at hearing and the parties' post-hearing briefs, I modify Citation No. 9374373 as set forth below. I assess a penalty of **$200.00**.

[1] In this decision, the joint stipulations, transcript, Secretary's exhibits, and Respondent's exhibits are abbreviated as "Jt. Stip.," "Tr.," "Ex. S–#," and "Ex. R–#," respectively.

II. STIPULATIONS OF FACT

At hearing, the parties agreed to the following stipulations of fact included in their prehearing submissions:

1. Respondent was at all times relevant to this matter an independent contractor performing services or construction at Spanish Springs Pit #6.

2. The subject mine is a "mine" as that term is defined in Section 3(h) of the Mine Act, 30 U.S.C. § 802(h).

3. At all times relevant to this case, the products of the subject mine entered commerce, or the operations or products thereof affected commerce, within the meaning and scope of Section 4 of the Mine Act, 30 U.S.C. § 803.

4. Bragg Crane Service is subject to the jurisdiction of the Mine Act, 30 U.S.C. § 801, *et seq*.

5. These proceedings are subject to the jurisdiction of the Federal Mine Safety and Health Review Commission and its designated Administrative Law Judges pursuant to Sections 105 and 113 of the Mine Act, 30 U.S.C. §§ 815, 823.

6. 30 C.F.R. § 56.16009 is a mandatory health or safety standard as that term is defined in Section 3(1) of the Mine Act, 30 U.S.C. § 802(1).

7. The citation contained in Exhibit A attached to the Petition for Assessment of a Penalty for this docket is an authentic copy of the citation at issue in this proceeding.

8. The individual whose name appears in Block 22 of the citation at issue in these proceedings was acting in her official capacity as an authorized representative of the Secretary when the citation was issued.

9. The exhibits offered by the parties are authentic, but no stipulation was made as to their relevance or the truth of the matters asserted therein.

Joint Prehearing Statement at 3; *See* Tr. 7.

III. SUMMARY OF TESTIMONY

a. The Secretary

MSHA Inspector Kimberly Hakala[2] testified for the Secretary. She stated that on December 10, 2018, she went to Spanish Springs Pit #6 to conduct a regular inspection. Tr. 14. Once she arrived, she learned that Bragg was on site that day to pick a hopper away from the primary plant. Tr. 15. She testified that Martin Marietta's plant manager, Abram Woodward, accompanied her while she observed the pick, and that he took photos. Tr. 17.

The hopper was lifted off of the plant, rotated, and placed on the ground. Tr. 18, 21, 24, 64–65. Hakala witnessed the entire job from an elevated catwalk, approximately 60–80 feet away from where the load was ultimately placed. Tr. 44–45, 69–70; *see* Tr. 17; Ex. S–7, p. 2. Hakala testified that two tag lines were attached to the load, and that one of the lines was initially held by a man on an elevated catwalk. Tr. 19, *see* Ex. S–7, p. 2. She stated that the man moved along the catwalk while holding the tag line and then threw the tag line to the ground to be retrieved by another miner. Tr. 19. Then, according to Hakala, a Bragg employee and a Martin Marietta employee who were both on the ground "moved in"—the Martin Marietta miner to retrieve the tag line and the Bragg miner to observe where the hopper was in relation to the plant structure. Tr. 19–20.

Hakala testified that when the two miners moved in towards the tag line, the hopper was positioned directly above them. Tr. 20. She issued a verbal imminent danger order[3] to Woodward based on her observation that the miners were standing beneath the load and were in danger of being struck by it. Tr. 21. Hakala stated that Woodward shouted down to the miners, they moved out from under the load, and "within moments both of them came back in." Tr. 22–23. After Hakala told Woodward again to remove the miners from the area, he shouted to them a second time and they thereafter stayed out from underneath the suspended load. Tr. 23. Hakala explained that she believed the miners went back in the second time in order to retrieve the tag line again, since they had dropped it the first time they were told to move away from the load. Tr. 23.

Hakala further testified that after the hopper was placed on the ground, she and Woodward made their way down to the ground level to have a safety briefing with the miners, where she explained why she issued the imminent danger order. Tr. 24, 53. She stated at hearing that McPartland, the Bragg employee on the ground during the pick who identified himself as the "leadman," told her during this safety briefing that he was not directly under the load but was two feet to the side of it, within the "fall zone" of the hopper. Tr. 24–26, 56.

[2] Kimberly Hakala has been an MSHA inspector for nearly eight years. Tr. 12. She previously worked for approximately 10 years in various roles at her family's gypsum limestone operation. Tr. 13.

[3] This 107(a) order, Order No. 9374371, was issued to Martin Marietta, not Bragg Crane Service. It was withdrawn by the Secretary at hearing.

b. The Respondent

Bragg mechanic/oiler Kyle McPartland,[4] crane operator Zachary Cramer,[5] and branch manager Dean Stone[6] testified for Respondent. McPartland was the signalman for this job, and asserted at hearing that he has no supervisory responsibility in his position. Tr. 96, 114. He testified that after the Bragg employees arrived at the mine site on December 10, 2018, they received site-specific training and were then escorted to where the hopper was located to set up the crane and had a safety meeting with the Martin Marietta employees involved in the job. Tr. 99–100. McPartland said that the dimensions of the fall zone—the area where the hopper might end up in the event it fell or tipped over—were not discussed in exact terms. Tr. 133. Once the rigging was set up and the miners were getting ready to pick the hopper, Inspector Hakala arrived and asked a few questions. Tr. 102.

McPartland stated that the lift began upon his signal, while he was located on an elevated catwalk observing the boom angle of the crane. Tr. 105–06. He and one Martin Marietta miner then went down to the ground level to observe the hopper's location as it was moving into place. Tr. 107–08; *see* Ex. S–7, p. 2. By his estimate, Hakala was 80 to 90 feet away from him at this point in the pick. Tr. 108.

According to McPartland, the tag line held by the miner who stayed up on the catwalk was never dropped. Tr. 109. McPartland stated that the miner was preparing to throw the line down to the Martin Marietta miner on the ground right before Woodward yelled at him not to throw it. Tr. 109. The load was brought in closer and rotated accordingly—without either tag line ever being dropped—and then lowered onto the ground. Tr. 108–09, 140–41.

McPartland testified that Hakala talked to him individually once the load was on the ground. Tr. 115. According to him, she never questioned him about how close he was to the load or whether he would have been struck by the load if it fell. Tr. 115. McPartland stated that he remembered his conversation with Hakala to be limited to questions about his name and his role in the company and about her opinion that more tag lines should have been used. Tr. 116.

McPartland asserted that he moved away as the hopper was moving closer to him, and that no miner ever entered an area where he would have been struck by the load. Tr. 116, 149. He stated that the closest he was to the load as it was lowered was 10 feet away. Tr. 117.

Zachary Cramer operated the crane during the inspection at issue. According to Cramer, it was Martin Marietta—not Bragg—that decided to use two tag lines to control the load. Tr. 164–65. He testified that at one point, he heard someone yell "stop, don't throw the tag line

[4] Kyle McPartland has worked for Bragg as a mechanic/oiler for 11 years. Tr. 95–96.
[5] Zachary Cramer has worked as a crane operator for Bragg since January 2016 and has been a crane operator since August 2015. Tr. 156–58. Prior to becoming a crane operator, he worked as a certified rigger and signalman for three years. Tr. 160.
[6] Dean Stone worked for Bragg Crane from 1977 to 1995 as a crane operator. Tr. 202. After a hiatus from the industry, he returned to Bragg in 2009 and has been a branch manager since. Tr. 203.

down" as the Martin Marietta crew member on the catwalk holding the tag line was coiling up the line and apparently preparing to throw it down. Tr. 170. He stated that the miner never threw the line down and held onto it until the hopper was on the ground. Tr. 170.

Cramer testified that a fall zone of 10 feet was identified prior to the pick, and that everyone involved in the job was told to stay 10 feet clear of the hopper. Tr. 173–74. He stated that he never saw anyone enter the fall zone, and that no one was ever in danger of being crushed by the hopper. Tr. 168, 172. He said that if he had seen someone in the fall zone, he would have stopped operation of the crane immediately. Tr. 168. Cramer also testified that though he heard Inspector Hakala was on site that day, he never saw or spoke to her. Tr. 163.

IV. PARTY ARGUMENTS

a. Secretary's Argument

The Secretary argues that Respondent violated 30 C.F.R. § 56.16009 when employee Kyle McPartland failed to stay clear of a suspended load. Secretary's Post-Hearing Brief (Sec'y Br.) at 6–7. The Secretary alleges that the miner on the catwalk behind the hopper threw the tag line he was holding down to the Martin Marietta maintenance worker on the ground. *Id*. at 3. Following this, the Martin Marietta miner moved in to retrieve the tag line, and McPartland moved in to observe the hopper. *Id*.; Tr. 19, 46. Inspector Hakala observed the miners directly under the suspended load, and issued a verbal imminent danger order to plant manager Abram Woodward, who shouted down to the miners to get out from under the load. Tr. 20–21; Sec'y Br. at 3. The Secretary argues that both miners then went back into the fall zone and Hakala issued a second verbal order for them to move out from under the load. *Id*. After the second warning, they stayed out from under the load. Sec'y Br. at 3; Tr. 22–23.

The Secretary argues that Hakala then came down to the ground level and spoke with the miners as a group. Tr. 60–61; Sec'y Br. at 3–4. During that discussion, McPartland admitted to being two feet to the side of the hopper's vertical fall line. Tr. 24; Sec'y Br. at 4. The Secretary contends that the violation should remain designated as high negligence and that any injury resulting from the violation would be fatal. Sec'y Br. at 7–8.

a. Respondent's Argument

Respondent contends that the citation should be vacated because miners were neither directly under the load nor in the load's fall zone at any time during the pick. Respondent's Post-Hearing Brief (Resp. Br.) at 13. Respondent alleges that the miners involved in the pick operation stayed a safe distance from the hopper and moved away as the load moved. *Id*. at 13; Tr. 168–69. If anyone had gone under the load or into the fall zone, McPartland or Cramer would have stopped work. Resp. Br. at 12, 13; Tr. 117, 168.

Alternatively, Respondent argues that if a violation occurred, "there was no reasonable likelihood that the crane's rigging would fail, or that any employee was otherwise in jeopardy of being injured by the load." *Id*. at 14. Respondent therefore asserts that there was no likelihood of injury and no negligence. *Id*. at 15.

V. DISPOSITION

a. Fact of Violation

Inspector Hakala alleged in Citation No. 9374373 that Respondent violated 30 C.F.R. § 56.16009:

> Two miners were observed under an approximate 40,000 pound suspended load while attempting to remove the hopper from the Primary Plant. One miner was directing the load and the other miner was trying to grab the suspension line from a third miner who was above the load. The hopper was suspended approximately 20–25 feet above the miners. This condition exposes miners to fatal type injuries in the event of an accident. A verbal imminent danger order was issued to the mine's Plant Manager. Order # 9374371 was issued in conjunction with this citation and citation #9374372.

Ex. S–3.

The standard provides that "[p]ersons shall stay clear of suspended loads." 30 C.F.R. § 56.16009. Hakala determined that the violation was highly likely to result in injury, that the injury could reasonably be expected to be fatal, and that the violation was significant and substantial (S&S) and affected two people. Ex. S–3. She determined the violation was the result of high negligence. *Id*.

It is undisputed that § 56.16009 requires miners to not only stay out from directly under suspended loads, but to also stay clear of the area that could be affected if a load were to fall. Sec'y Br. at 6; Resp. Br. at 10–12; *see Anaconda Co.*, 3 FMSHRC 299, 301 (Feb. 1981) (considering substantively identical rule later recodified at § 56.16009 per Recodification of Safety and Health Standards for Metal and Nonmetal Mines, 50 Fed. Reg. 4048-01 (Jan. 29, 1985)). The regulation aims "to prevent persons from being hit by such loads through barring persons from locating within a hanging load's possible arc or radius." *Haines & Kibblehouse, Inc.*, 30 FMSHRC 504, 517 (June 2008) (ALJ).

The Commission has long held that "[i]n an enforcement action before the Commission, the Secretary bears the burden of proving any alleged violation." *Jim Walter Res., Inc.*, 9 FMSHRC 903, 907 (May 1987); *Wyoming Fuel Co.*, 14 FMSHRC 1282, 1294 (Aug. 1992). The Commission has described the Secretary's burden as:

> The burden of showing something by a "preponderance of the evidence," the most common standard in the civil law, simply requires the trier of fact "to believe that the existence of a fact is more probable than its nonexistence."

RAG Cumberland Res. Corp., 22 FMSHRC 1066, 1070 (Sept. 2000); *Garden Creek Pocahontas Co.*, 11 FMSHRC 2148, 2152 (Nov. 1989). For the reasons that follow, I find that the Secretary has presented sufficient evidence to show that McPartland went into the fall zone in violation of § 56.16009. However, I find that he did not go directly under the suspended load.

During this inspection, Bragg's crane lifted a 40,000 pound hopper from Martin Marietta's primary plant and lowered it onto the ground as depicted in Exhibit 7, page 3. While observing the job, Hakala stood on an elevated catwalk near where the hopper was located before it was lifted off of the plant. Tr. 43; Ex. S–7, p. 2, 3. Consequently, the load moved away from her as it was lowered onto the ground. By both Hakala's and McPartland's estimates, Hakala was approximately 80 feet away from the miners when she allegedly observed them walk into the fall zone of the suspended load. Tr. 44, 108. Therefore, in addition to her less-than-ideal vantage point, she was a significant distance from the miners on the ground.

At hearing, Hakala testified numerous times that the miners appeared to go directly under the suspended hopper. Tr. 20, 21, 47, 69. However, she was inconsistent when asked about particular details of the violation. When asked during cross-examination whether McPartland was in any danger at the time the critical photo in Exhibit 7, page 2 was taken, she said that "it's possible if this thing were to tip that he would be *really close* to that fall zone where he's at right now." Tr. 45–46 (emphasis added). When later questioned by the court about the same photo, Hakala said that the entire area inside of the pictured yellow bollards—within which McPartland is standing in the photo—was within the fall zone of the hopper with the hopper in its photographed location. Tr. 85–86. On re-cross, Hakala was again asked if anyone was in the fall zone at the time the photo was taken. Tr. 91. She responded that "he's in a position where *he could be as it continues to move*." Tr. 92 (emphasis added). It is unclear whether Hakala believed McPartland was really close to the fall zone, definitely in the fall zone, or possibly in the fall zone at the time the photo was taken. Moreover, she evaded and ultimately failed to answer Respondent's question about how high the load was at the precise time the violation occurred, instead only repeating her estimation of the height of the load at the beginning of the pick. Tr. 81–82.

Given the above inconsistencies in Hakala's testimony and her sub-optimal viewpoint during the inspection, I find that the Secretary has failed to show by a preponderance of the evidence that McPartland was ever *directly under* the suspended load.

Crucially, the Secretary failed both at hearing and in his post-hearing brief to articulate the specific parameters of the fall zone in this case. I ascertain nevertheless that the fall zone of the suspended hopper was 10 feet around the load, particularly because Cramer, Bragg's crane operator, testified that "a fall zone was identified" and that people were told to stay 10 feet clear of the load. Tr. 174.

In its correspondence to MSHA four days after the inspection, Bragg stated that "no employee was ever less than *6 to 10* feet from the vertical fall line of the suspended hopper." Ex. R–A, p. 1 (emphasis added). However, according to Hakala's notes, written as she interviewed the miners following the pick, McPartland asserted that the miners were never directly under the load but were approximately two feet from the vertical fall line. Ex. S–4, p. 1; Tr. 26–28. Though the exact distance between McPartland and the vertical fall line at the moment of violation may be indeterminate, I find that sufficient evidence supports the finding that he violated 30 C.F.R. § 56.16009 by entering the established fall zone of 10 feet.

Accordingly, the fact of violation is affirmed.

b. Gravity

A violation is significant and substantial (S&S), "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 (Apr. 1981).

In order to uphold a citation as S&S, the Commission has held that 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. *Mathies Coal Co.*, 6 FMSHRC 1, 3–4 (Jan. 1984).

The Commission has held that the second element of the *Mathies* test addresses the extent to which a violation contributes to a particular hazard. *Newtown Energy, Inc.*, 38 FMSHRC 2033, 2037 (Aug. 2016). Analysis under the second step should thus include the identification of the hazard created by the violation and a determination of the likelihood of the occurrence of the hazard that the cited standard is intended to prevent. *Id*. at 2038. At the third step, the Secretary must prove there was a reasonable likelihood that the hazard contributed to by the violation will cause an injury, not a reasonable likelihood that the violation, itself, will cause injury. *West Ridge Resources, Inc.*, 37 FMSHRC 1061, 1067 (May 2015) (ALJ), *citing Musser Eng'g, Inc.*, 32 FMSHRC 1257, 1280–81 (Oct. 2010. Evaluation of the four factors is made assuming continued normal mining operations. *U.S. Steel Mining Co.*, 6 FMSHRC 1573, 1574 (July 1984).

Hakala explained at hearing that she designated this citation as S&S because "it was reasonable to believe that there was an injury of a fatal type that would occur." Tr. 36. She testified that she designated the citation as highly likely because "it was highly likely that they could be crushed by this load *should it fall*." Tr. 34 (emphasis added).

I have already determined that Bragg violated § 56.16009, a mandatory safety standard, because McPartland entered the fall zone of the suspended hopper. The safety hazard posed by the violation is that the suspended load could injure a miner on the ground if it were to fall. I find, however, that it is unlikely this hazard would occur. Though an injury would be of a fatal nature if the load were to fall, Hakala's determination that such an event was highly likely is incorrect. Bragg prepared carefully and took the precautions necessary to ensure that the hopper would be lifted and relocated without incident. *See* Tr.120–28; *see also* Ex. R–A. The load was unlikely to fall.

Worth noting here, mine operator Martin Marietta Materials, Inc. was issued a nearly identical citation for this violation. The citation was settled in Docket No. WEST 2019-0228. In his settlement motion in that case, the Secretary stated that "[p]ersons were clear of (not under) the load." Mot. For Settlement at 3, *Martin Marietta Materials Inc.*, WEST 2019-0228. The Secretary requested that the court modify the gravity designations to reflect that injury was unlikely and that the violation was not S&S. The court accepted the Secretary's explanations for the modifications and approved the settlement. Decision Approving Settlement, *Martin Marietta*

Materials Inc., WEST 2019-0228. Because the representations made in that related operator case differ from the Secretary's position in the present case, the Court instructed the parties to address whether the doctrine of judicial estoppel affects this proceeding.[7] Unpublished Order dated Nov. 12, 2019. After briefing the issue of judicial estoppel, the Secretary affirmatively chose not to brief how this violation was S&S or highly likely to result in a fatality. Sec'y Br. at 5–6. Without invoking judicial estoppel, I find that the settlement reached in WEST 2019-0228 nevertheless lends notable support to the notion that this violation was unlikely to result in injury and was not S&S.

Because injury was unlikely, the third factor of the *Mathies* test is not met. I find that the this violation was unlikely to result in injury, that the injury could reasonably be expected to be fatal, that two people were affected, and that the violation was not S&S.

c. Negligence

Under the Mine Act, operators are held to a high standard of care, and "must be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices." 30 C.F.R. § 100.3(d). MSHA's regulations define reckless disregard as conduct which exhibits the absence of the slightest degree of care, high negligence as actual or constructive knowledge of the violative condition without mitigating circumstances; moderate negligence as actual or constructive knowledge of the violative condition with mitigating circumstances; and low negligence as actual or constructive knowledge of the violative condition with considerable mitigating circumstances. 30 C.F.R. § 100.3: Table X.

Inspector Hakala designated the citation as high negligence, explaining at hearing that McPartland, as the "individual in charge, had direct knowledge and he was involved in the imminent danger and the violation itself." Tr. 35. I find that the Secretary failed to credibly establish that McPartland was in charge. McPartland credibly testified that he did not have any supervisory responsibility. Tr. 96.

I find that Bragg's negligence is low. McPartland should not have entered the fall zone, but based on the testimony and evidence presented in this case, it is clear to me that to the extent he entered the fall zone, his presence there was momentary. Furthermore, Bragg took comprehensive safety precautions ahead of and during the pick. For instance, the miners involved in the job all took part in a safety meeting prior to the pick. Tr. 100–01. In its configuration that day, the crane was authorized to lift a load much heavier than the hopper. Ex. R–A, p. 7, *see* Resp. Br. at 6–7. The rigging utilized was also rated for far more weight than was being lifted. Resp. Br. at 7.

[7] Discussed by the Supreme Court in *New Hampshire v. Maine*, the doctrine of judicial estoppel prevents parties from taking a certain position in a legal proceeding and then assuming a contrary position in a later proceeding. 532 U.S. 742, 749–50 (2001). Because the respondents are different in these cases, I will not invoke the doctrine. However, I have taken judicial notice of the representations made and settlement reached in the corresponding operator case.

Given the considerable mitigating circumstances, I reduce Bragg's negligence from high to low.

VI. PENALTY

It is well established that Commission administrative law judges have the authority to assess civil penalties de novo for violations of the Mine Act. *Sellersburg Stone Company*, 5 FMSHRC 287, 291 (Mar. 1983). The Act requires that in assessing civil monetary penalties, the Commission ALJ shall consider the six statutory penalty criteria:

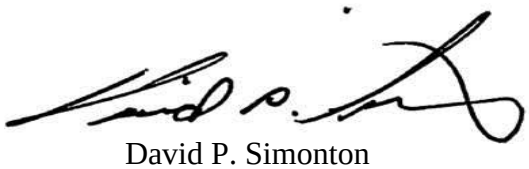
> (1) the operator's history of previous violations, (2) the appropriateness of such penalty to the size of the business of the operator charged, (3) whether the operator was negligent, (4) the effect on the operator's ability to continue in business, (5) the gravity of the violation, and (6) the demonstrated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

30 U.S.C. § 820(i).

The Secretary proposed a regularly assessed penalty of $2,615.00. Bragg has no history of previous violations. Bragg did not present evidence regarding its size or argue that the size of the penalty was disproportionate. Further, Bragg did not contend at hearing or in its submissions in this case that the penalty amount would affect the company's ability to continue in business. As discussed in greater detail above, I find this violation to be non-S&S and unlikely to result in a fatal injury. I reduce Bragg's negligence from high to low in light of the significant mitigating circumstances. No evidence was presented on good faith in compliance. In light of these considerations, I assess a penalty of **$200.00**.

VII. ORDER

Respondent is hereby **ORDERED** to pay the Secretary of Labor the total sum of **$200.00** within 30 days of this order.[8]



David P. Simonton
Administrative Law Judge

[8] Please pay penalties electronically at Pay.Gov, a service of the U.S. Department of the Treasury, at https://www.pay.gov/public/form/start/67564508. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers.

Distribution: (Email[9])

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[9] For the foreseeable future, Federal Mine Safety and Health Review Commission (FMSHRC) notices, decisions, and orders will be sent only through electronic mail. Because FMSHRC will not be monitoring incoming physical mail or faxes, parties are encouraged to submit all filings through the agency's electronic filing system. If you are not able to file through our electronic filing system, please send an email copy and we will file it for you.