FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-233-3889 / FAX: 202-434-9949

September 18, 2015

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner, v. BARDO MINING, LLC, Respondent.	CIVIL PENALTY PROCEEDING Docket No. KENT 2008-570 A.C. No. 15-18694-136543 Mine: Bardo No. 1

DECISION

Appearances: Angele Gregory, U.S. Department of Labor, Office of the Solicitor, Nashville, Tennessee, for the Petitioner
LaTasha Thomas, U.S. Department of Labor, Office of the Solicitor, Nashville, Tennessee, for the Petitioner
Thomas Grooms, U.S. Department of Labor, Office of the Solicitor, Nashville, Tennessee, for the Petitioner

James Bowman, Bowman Industries, Midway, West Virginia, for the Respondent
George Bowman, Bowman Industries, Midway, West Virginia, for the Respondent

Before: Judge Sippel

Background

This proceeding was commenced by the Secretary of Labor, United States Department of Labor. It seeks civil money penalties for violations of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, et seq. ("Mine Act"). An evidentiary hearing set by the Federal Mine Safety and Health Commission (FMSHRC) was held in Cumberland, Kentucky, with Administrative Law Judge Richard L. Sippel presiding.

Respondent Bardo Mining, LLC, ("Bardo") owns and operates underground coal mine Bardo No. 1 in Harlan, Kentucky. The charges for decision consist of nine citations which were

issued incident to a federal mine safety inspection.[1] For the reasons stated below, the Presiding Judge affirms all Citations, with corresponding levels of gravity, negligence, and mitigation, and imposes civil penalties, as modified, totaling **$73,799.00**.

FINDINGS OF FACT

The Mine Safety and Health Administration (MSHA) conducted an inspection of Bardo's Mine No. 1 on November 5, 2007, and thereafter. Findings of the inspection are as set forth below.

Citation No. 7502246

Defective Structural Supports

> [T]he roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts. 30 C.F.R. § 75.202(a).

On December 5, 2007, MSHA Inspector Kevin Doan[2] issued Citation No. 7502246. He observed and reported draw rock[3] hanging from a roof above the track haulageway at the Bardo Mine. Tr. I at 59-60.[4] The Citation provides:

> Persons working or traveling along the track haulage way are not protected from roof falls. Loose and overhanging draw rock was apparent between crosscuts 4 and 6 on the track haulage way parallel to the number 6 belt conveyor. The draw rock is from 1 to 4 inches thick and is above the travel way used by miners. The Bardo mine uses open top type mantrips.

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[1] Prior to hearing, the parties agreed to vacate Citation Nos. 7522921 and 7522924 and settle Citation Nos. 7503275, 7522928, 7522911, and 7522923, leaving nine citations at issue in the hearing.

[2] At the time of hearing, Inspector Doan had approximately 30 years' experience in the mining industry. He had worked in coal mines in a number of capacities, including jobs as a roof bolter, belt shoveler, equipment operator, and section foreman. Tr. I at 30. He began employment with MSHA in November 1999, where he works as a roof control specialist. Tr. I at 30-31.

[3] Draw rock is material from the mine roof that becomes separated from the rock above it and is prone to fall while in this loose state. Tr. I at 61.

[4] The hearing in this case was held over the course of two days. A separate volume of the transcript was released for each day. Each volume begins with page one. To avoid confusion, the Presiding Judge ("Judge" or "the Court") will cite to each of the two transcript volumes as "Tr. I" and "Tr. II."

GX 9. This Citation designated violations of 30 C.F.R. § 75.202(a). Inspector Doan designated the risks in this Citation as significant and substantial, caused by Bardo's moderate negligence, and reasonably likely to result in lost workdays or restricted duty. GX 9.

Inspector Doan rode a rail runner mantrip[5] into the mine. Tr. I at 64. On the return trip, he noticed loose draw rock along the trackway. Tr. I at 65. Doan stopped the mantrip and had the rock taken down. Tr. I at 67. He and miners used a four-foot steel bar to scale the roof and remove the draw rock. Tr. I at 68-69. Doan stated that he issued the Citation because "if [this rock] hit a person, they would be injured, and it's obviously delaminated, separated from the overlying roof strata, so it's just a question of when before it actually comes all the way down." Tr. I at 67. Inspector Doan noted that this condition encompassed several pieces of rock "through a two crosscut area between crosscut No. 4 and crosscut No. 6." *Id.* He estimated that the loose draw rock was spread out across an area of 120 feet along the trackway. Tr. I at 68-69. The affected area would be traveled at least six times a day. Tr. I at 70-71.

The Citation noted that injury was reasonably likely to occur from this condition. Tr. I at 73; GX 9. Given the frequency with which miners traverse the area and the amount of rock that had already separated from the roof, Inspector Doan considered it reasonably likely that a piece of rock could fall on someone in the mantrip and cause an injury. Tr. I at 73. He noticed several areas in the 120-foot area of the two crosscuts where the rock had separated and was hanging from the roof over the track. Tr. I at 73, 81. He removed a variety of large and small rocks and estimated that the largest rock that was pulled measured four feet by three feet and a few inches thick. Tr. I at 80, 82, 147. He estimated that the largest rock weighed 325 pounds, while the smallest rocks weighed five to six pounds. Tr. I at 76, 148, 150. He characterized this condition as significant and substantial and reasonably likely to result in lost workdays. Tr. I at 76, 148. *Id.*

Inspector Doan found moderate negligence. Tr. I at 76. He overlooked the condition on his way into the work section, but noted it as he exited:

> The condition was obvious but it could have been overlooked on the way in. For instance I traveled under it as we discussed and that would be an extenuating circumstance, or I thought that it . . . didn't qualify as high negligence . . . .

Tr. I at 76-77. He concluded that the condition had existed for several shifts prior to his examination. Tr. I at 77, 81. He recognized that "[w]eathering of rock and the separating of rock . . . can happen quickly, but [because] this area was quite a distance from the face, it had been developed for some time." Tr. I at 77. The condition had not recently developing because there were multiple pieces of draw rock and the breaks were not fresh. He concluded:

> If you see a piece of rock that is obviously fresh . . . and if you have fresh rock dust on the floor and you see small pieces or flakes of rock on the floor on top of rock dust, that would indicate that it had happened very recently.

[5] A "mantrip" is a vehicle that hauls miners and supplies to and from the work area. Tr. I at 92. A "rail runner mantrip" is a battery-powered, rail mounted mantrip. Tr. I at 64.

Tr. I at 120. The mine did not have overhead lighting, but it did have directional lighting from miners' cap lamps and lights on the mantrip. Tr. I at 124. Either the preshift examiner or the section foreman who would travel out with his crew at the end of the day should have seen the hanging rock that Inspector Doan saw as he came out. Tr. I at 78, 84-85.

On cross-examination, Inspector Doan agreed that the Bardo mine was not required by the terms of its roof control plan to install straps without adverse roof conditions. Tr. I at 86. He agreed that Bardo installed five roof bolts per row, which exceeds the four-bolt minimum required by the plan. Tr. I at 93. Given the location of the roof bolts and the metal straps that secure the roof, the maximum width of a fallen piece of draw rock would be four feet. Tr. I at 98.

The Citation, however, was not issued for a violation of Bardo's roof control plan. Tr. I at 100. The rock was cantilevered, laying atop a metal strap and supported against the roof at one end but hanging down on the other end. Tr. I at 104-06. Inspector Doan determined that rock would fall if those mining conditions continued. Tr. I at 105. Due to the cantilevering, he did not notice the hanging draw rock on his way into the work section, but he did notice it on his way out of the mine. Tr. I at 105-06. He conceded that a supported loose roof does not need to be taken down, provided "it's adequately supported . . . with wire mesh or some other type of roof support." Tr. I at 106.

Bardo took only eight minutes to abate the condition. Tr. I at 108-10. Inspector Doan, the Bardo Superintendent, and the rail runner operator simply pulled down loose rock to abate the condition. Tr. I at 115, 123. Inspector Doan believed that these conditions existed for some time and the mine operator had opportunity to correct the conditions. Tr. I at 113.

Superintendent Shepherd[6] testified that he had accompanied Inspector Doan on his examination of the Bardo Mine. Tr. I at 129. They rode the rail runner into Bardo's work section. On their return, Inspector Doan observed loose draw rock hanging above the track. *Id.* Mr. Shepherd pointed out that the track entry was supported by fully grouted 5-foot pins, straps, and some cribs. Tr. I at 130. Mr. Shepherd, like Inspector Doan, failed to notice the loose draw rock while traveling into the mine. *Id.* Mr. Shepherd described the size of the rocks as "little small cracks [which] wasn't really thick." Tr. I at 130-31. He thought the roof was adequately supported with the straps that were in place. Tr. I at 131.

But, Mr. Shepherd further testified that he found it difficult to pull down the draw rock, observing: "Some of it was hard to break loose, because that laminated stuff is like sandstone rock." Tr. I at 131. The rock "really wasn't what you would say hanging down, but you could tell it dropped down a little." Tr. I at 133. Estimating size, he testified: "I would say anywhere from 2 inches wide to 6 inches wide—and . . . probably 2 inches thick to maybe 4 inches thick . . . and length maybe 2 foot, 3 foot." Tr. I at 134. He stated that because of the supplemental support, the roof bolts were separated by three to four feet. *Id.* He estimated the smaller pieces of rock to be about two inches wide and one to three feet long. *Id.*

[6] Mr. Shepherd had 28 years of experience in the mines. Tr. I at 128. He worked as a repairman, a face boss, and the Bardo Superintendent who manages the mine. Tr. I at 129.

On cross-examination, Mr. Shepherd confirmed that he saw rock hanging from the roof. Tr. I at 136. He testified that it was separated one inch from the roof. *Id.* Incredibly, he did not believe that a rock that is three feet by four inches would hurt someone. Tr. I at 139-40. He also thought that a rock measuring two to three feet long, two inches thick, and two inches wide would weigh 15 to 20 pounds. Tr. I at 141. Mr. Shepherd believed that defective roof conditions could have occurred between the preshift examination, which occurred at 4:00 a.m., and 1:40 p.m. when Inspector Doan issued the Citation. Tr. I at 142.

Citation No. 7522909

Failure to Follow Roof Control Plan

> Each mine operator shall develop and follow a roof control plan . . . that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered. 30 C.F.R. § 75.220(a)(1).

On November 6, 2007, Inspector Kenny Dixon[7] conducted an earlier inspection at the Bardo Mine No. 1. Tr. I at 160. He issued Citation No. 7522909, citing Bardo's violation of its roof control plan which is required by § 75.220(a)(1). Tr. I at 163; GX 1; GX 10. Bardo had failed to comply with its roof control plan when its roof bolter machine installed roof bolts without the ATRS[8] placed firmly against the mine roof in the No. 5 heading.[9]

The Citation resulted from an improper use and application of a twin-head roof bolter used to install bolts in the roof of a mine. Tr. I at 163. The twin-head feature refers to two separate heads, one on each side. *Id.*; *see also* GX 19. Each head has a halo ring to provide temporary roof support while operators install bolts. Tr. I at 165. In an area that has been mined and is not yet supported by roof bolts, mine operators will use a twin-head roof bolter to provide protection and support of the mine roof while operators are installing roof bolts. Tr. I at 167. The halo rings are a part of an ATRS that comes into contact with the mine roof to buttress support as the operators install roof bolts. Tr. I at 166-68. The equipment includes a "canopy" under which the operators stand for safety while installing. Tr. I at 168-69.

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[7] Inspector Dixon has worked in coal mines since 1997. He worked in an underground coal mine as a maintenance worker and greaser with Adena Fuels. Tr. I at 155. He then worked for Harlan Cumberland Coal Company until 2006. Tr. I at 156. He learned how to operate a ram car, a shuttle car, a scoop, and a roof bolter. Tr. I at 157. Mr. Dixon has been an inspector for MSHA since 2006. *Id.*

[8] "ATRS" is an "Automatic Temporary Roof Support" that can be used as an intermediate solution to secure loose ceiling rocks.

[9] Inspector Dixon's notes indicate that the hazardous condition occurred in the No. 1 heading. GX 10A. He clarified at hearing that he had mistakenly inverted the No. 1 and No. 5 for the headings while recording contemporaneous notes. Tr. I at 197.

Inspector Dixon watched a continuous miner take a cut out of the No. 5 heading. Tr. I at 171. It was removed from the area soon after the coal was cut. *Id.* He then observed the twin-head roof bolter while it was in operation. Tr. I at 172. He noticed that the halo rings had extensions installed which allowed them to reach higher. *Id.* The extensions were mounted directly on top of the halo rings. When he came upon the pinner[10] he saw it was equipped with 24-inch extensions. Tr. I at 173. Since this machine only extends to a certain height that will reach and contact the roof, extensions permit reaching higher while supporting the roof. Tr. I at 173-74.

The mine's roof control plan calls for the ATRS to be set firmly against the roof while bolting. The machine must also be compatible with height needs. Tr. I at 174; GX 15. According to the Bardo roof control plan:

> During bolting operations the ATRS shall be set firmly against the mine roof at a distance not to exceed 5 feet from the last row of installed roof bolts . . . . The controls to position and set the ATRS shall be located where they can only be operated from beneath permanently supported roof and the ATRS is placed firmly against the mine prior to drilling and installing roof bolts.

GX 15A.

Inspector Dixon noticed that the right-side ATRS was not in contact with the mine roof. Tr. I at 177. The left-side was able to swivel back and forth because only one part of it was contacting the roof. *Id.* The extensions had four metal blocks, measuring from four to six square inches around each ring which were the blocks that were supposed to be in contact with the roof. Tr. I at 178. On the right side of the pinner, none of the blocks contacted the mine roof; on the pinner's left side, only one of the four blocks was in contact with the mine roof: "The one block on the front of the machine was touching the mine roof, [but] the two on the sides and one in back were not in contact with the mine roof at all." Tr. I at 178-79. In addition, the roof bolter operators had 4-inch crib blocks under the stab jack[11] of the drill head to further increase the height. Tr. I at 179.

Inspector Dixon found it to be a hazard for the roof bolter to be in use while the pinner's halo rings were not flush with the roof, which exposed the roof bolter operators to an unsupported mine roof. Tr. I at 179-80. There also was the added risk of the mine roof falling in on them. Tr. I at 180. He ordered the miners to stop the bolting process. *Id.* By this time, they had already installed two roof bolts. *Id.* The operator on the left side had installed an outside bolt and was in the process of installing his inside bolt to complete the sequence. *Id.* Next, Inspector Dixon took height measurements around the pinner. Tr. I at 181. He determined that extensions on the bolter could not reach the roof. Tr. I at 183. Bardo needed to obtain longer extensions or

[10] "Pinner" is another name for a roof bolter machine. Tr. I at 173.

[11] A "stab jack" is an adjustable support that more down to contact a floor to stabilize a drill. Tr. I at 179. As the ATRS reaches up and compresses against the mine roof, the stab jack stabilizes the machine to keep it from pushing the drill head down. *Id.*

ramp up[12] equipment to effect a shorter mine height for bolting the roof. Tr. I at 183-84, 187.

Inspector Dixon noticed that ramping up had appeared in other entries: "There [were] ridge lines along the ribs where it appeared that they had . . . bolted and then later took that bottom layer out. There [were] also some headings across the section . . . where they had started ramping back up." Tr. I at 184-85. He noticed that ramping up had occurred in both the No. 4 and No. 2 entries, and each had roof heights where the pinner could not have reached the roof. Tr. I at 187. The evidence in these other areas show that there had been ramping up, which was proof that Bardo knew ATRS could not reach the top. *Id.*

Inspector Dixon told Superintendent Shepherd and Section Foreman Steve Crouch that he would be issuing a citation. Tr. I at 188, 228. He testified that neither the No. 5 nor the No. 3 headings[13] were ever bolted, because "the operator could not obtain extensions to put on the machine to reach the top; therefore, they literally had to move the section out of that area because they didn't have anything capable of bolting that mining height." Tr. I at 188. Bardo tried to replace the 24-inch extensions with 30-inch extensions to reach the roof heights, but even the 30-inch extension did not reach the roof. Tr. I at 188-89.

The Citation was marked "reasonably likely," as it presented a hazard to miners traveling under the unsupported roof that would likely result in an injury. *Id.* The draw rock cracks and test holes that Dixon observed in the roof further indicated that this was a substandard roof condition. *Id.* He located a test hole in the intersection where the bolt machine was sitting, while he saw draw rock "all over the section."[14] Tr. I at 190. In his notes, the Inspector recorded that he detected draw rock cracks between two and six inches long in various test holes across the section. Tr. I at 248. These conditions increased the danger because the "ATRS won't contact the roof and that [shows] the potential of this draw rock falling on one of the roof bolter operators." Tr. I at 190. The Inspector designated this Citation as permanently disabling since broken bones and crushing injuries were expected from a roof fall in this area. Tr. I at 190-91. The Citation stated "significant and substantial," as the condition "created a risk to miners that would result in a significantly substantial injury to a miner." Tr. I at 192-93. He designated the condition as "high negligence." Ridges were left on rib lines and the operator knew those facts or should have known that this condition existed. Tr. I at 193. Inspector Dixon concluded that the Section Foreman should have discovered this condition during his on-shift examination. Tr. I at 194. [15]

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[12] "Ramping up" means reaching the mine roof then pulling back in order to remove the coal from the bottom. Tr. I at 187.

[13] Inspector Dixon noted that the "No. 3 was not bolted. It was 10 feet, 2 inches. The pinner couldn't reach it either." Tr. I at 187.

[14] Inspector Dixon did not issue a citation for this draw rock because the strapping along the roof appeared adequate. Tr. I at 248.

[15] When an operator realizes that the ATRS will not reach the mine roof, the operator is supposed to shut the roof bolting operations down until they can obtain equipment that can reach the mine roof. Tr. I at 195. In order to abate the citation, Bardo had to move into another area of the mine that was shorter where the bolters could reach the top. Tr. I at 196.

Inspector Dixon further explained that the phrase "firmly against the roof" does not provide a precise definition of "firm" as far as the degree of pressure that the ATRS should have against the mine roof. "Tech support recommends a thousand pounds per square inch on the ATRS, but firm does mean position affixed to the top." Tr. I at 207. When Inspector Dixon checks for whether an ATRS is firmly against the mine roof, he uses a bar, or will test by hand to see if the ATRS can be moved. Tr. I at 209.

He recollected the roof being flat with no major rolls. Tr. I at 210. It was only when he arrived in the area and saw that the pinner was not touching the roof after three bolts had been installed, Inspector Dixon issued the Citation. Tr. I at 240. He noted that a canopy in use afforded some protection. Tr. I at 246.

Superintendent Shepherd had accompanied Inspector Dixon on the inspection. Tr. I at 255. Mr. Shepherd estimated that the height of the seam, which was a double seam, measured between eight and nine feet high. Tr. I at 256. He testified that the mine ramped on the bottom seam so that the bolt machine could reach the top. Tr. I at 257. He estimated that the mine had "probably ramp[ed] up 20 inches or better." Tr. I at 262.

Mr. Shepherd recalled that three of the four pegs on the extension attached to the halo ring touched the roof. Tr. I at 259. He confirmed that both 18-inch and 24-inch extensions were used on the ATRS. Tr. I at 258. He and Inspector Dixon disagreed. "We had . . . a little bit of disagreement because he said it wasn't reaching the way it should, and it—it was touching. I thought it was touching." Tr. I at 260. On cross-examination, Mr. Shepherd acknowledged that he did not take notes on the day of the inspection. Tr. I at 265. There were no photos of the condition presented to the Court.

Citation Nos. 7522914, 7522917, and 7558110

> The roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts. 30 C.F.R. § 75.202(a).

Inspector Dixon issued Citation Nos. 7522914, 7522917, and 7558110 on November 8, 2007. As noted, this is a roof control standard that requires adequate support and control of the mine roof, face, and ribs. Tr. I at 269.

Citation No. 7522914

Inspector Dixon issued this Citation after observing two pieces of rock hanging from the ceiling over the No. 5 conveyor belt. Tr. I at 271-72. One measured "4 feet in length by 4 feet in width by 8 inches thick." The second measured "4 and a half feet in length by 2 and a half feet in width by three inches thick." Tr. I at 269; GX 3. Both portions of rock had broken from the mine roof despite installation of metal straps. Tr. I at 272-73. The bolt supporting two metal straps installed in the area had dislodged, leaving about an eight-inch gap between a bolt plate and roof.

Tr. I at 273. Inspector Dixon observed: "[T]he material around this bolt and these straps had broken away and actually had [fallen] out leaving this bolt and bearing plate approximately 8 inches from the mine roof." Tr. I at 274. Draw rock had dislodged from the roof; only a strap catching a corner of rock was holding it up. *Id.* A metal strap alone was holding up the rock. Tr. I at 275.

Inspector Dixon determined that the portion of roof hanging between two straps was hazardous. Tr. I at 276. The rocks hung over the No. 5 belt and extended to the belt's off side. Tr. I at 277.[16] That side of the belt is traversed twice daily by an on-shift examiner. Belt shovelers also clear coal and perform rock dusting on both sides of the belt. *Id.* Mr. Dixon also reported that other portions of the roof in that area had fallen, showing additional roof problems. Tr. I at 277-78.

The Citation was designated significant and substantial with the notation that the condition was reasonably likely to cause a permanently disabling injury. Moderate negligence was found. GX 3. The condition presented a hazard that was reasonably likely to result in severe crushing-type injuries or broken bones. Tr. I at 278. These roof conditions should have been discovered during an on-shift examination. Tr. I at 279. He concluded that "with the examination of the belt lines, the operator knew or should have known that this condition existed." Tr. I at 279-80. To abate the Citation, Bardo installed cribbing and wooden cross collars that were placed to hold the draw rock up. Tr. I at 280. When pressed, Mr. Dixon recalled that some cribs may have been present during his inspection on the walkway side of the belt against the rib. Tr. I at 284. But nothing more was noted than a non-conclusive "may have."

Benny Hensley, a certified surface and underground foreman/instructor, and Superintendent Shepherd testified for Bardo. Mr. Hensley was employed by Bardo. He worked 32 years in the mining industry as a surface and underground foreman. Tr. I at 287-88.

Mr. Hensley testified that when Inspector Dixon inspected the mine, Bardo was using 5 foot resin fully grouted roof bolts, with metal strapping installed in the roof. Tr. I at 288. Cribs were installed on the off side of the belts. Tr. I at 289. Fewer people move along the off side, these being the belt shovelers and rock dusters. *Id.* The No. 5 belt had an entry width of 18 to 20 feet, while the belt itself was 36 inches wide. *Id.* Mr. Hensley built a double row of cribs on the wide side of the belt and a single row of cribs on the off side. Tr. I at 290. Cribs were built on four-foot centers and spaced approximately three feet from each other. *Id.* He did not know how much weight the cribs could hold but knew they were said to be very strong. Tr. I at 292.

Mr. Shepherd accompanied Inspector Dixon at the time this Citation was issued. He recalled the dangling roof over the top of the No. 5 belt. Tr. I at 293. He also recalled that a bolt and a strap were holding the dangling roof. Tr. I at 294. He confirmed that Bardo had abated the Citation by installing cross collars. Tr. I at 293-94.

[16] Conveyor belts have two sides: the travelway side and the off side. Tr. I at 277.

Citation No. 7522917

Inspector Dixon also issued Citation No. 7522917. He cited another roof control issue and charged another violation of § 75.202(a). GX 5. A portion of the mine roof measuring 12 feet in length by 6 feet in width, and ranging from 6 to 8 inches thick, "had busted and fallen out from between the bolts in this area." Tr. I at 296-97. The mine roof in this area "had also deteriorated and there [were] several visible vertical cracks." Tr. I at 297. The cracks were one-eighth inch to one-half inch wide, and loose material had fallen between the bolts. Tr. I at 297-98, 306. Inspector Dixon noted that persons would be in this area at least twice daily and belt shovelers would clean up there throughout the day. Tr. I at 299, 307-08.

Defects specified were "reasonably likely" to cause a "permanently disabling" injury. Tr. I at 299. Inspector Dixon determined "moderate negligence" because on-shift examinations along the belt gave notice or reason to know that this condition had existed. *Id.* He also considered the deterioration of the mine roof and chunking between the bolts were a hazard. Tr. I at 300. He characterized the Citation as significant and substantial because this condition "created a hazard to miners that could reasonably result in a serious injury." *Id.* Specific injuries that could arise from a rock fall included broken bones and injuries resulting from being crushed under rock. Tr. I at 301. If the threatening piece of rock (12 feet by 6 feet by 6 to 8 inches thick) were to fall on a person, Inspector Dixon would expect fatal injuries. *Id.* To abate the Citation, the operator installed wooden cribs and wooden cross collars as additional roof support. Tr. I at 301-302.

On cross-examination, Inspector Dixon testified that even with bolt spacing in place rocks could fall between the bolts. Tr. I at 303. He did not cite the mine for rock that had already fallen; but fallen rock served as a warning of problems with roof crackings. Tr. I at 305-06. Deteriorating rock was evident throughout the entire roof in this area. Tr. I at 307.

Superintendent Shepherd confirmed that rock had fallen on the return side[17] of the No. 2 conveyor belt. Tr. I at 311. The rock fell between the bolts and the ribs, so a number of cribs were installed. Tr. I at 312-13. He also noticed cracks in the roof, but did not believe that this indicated that there were problems with the roof. Tr. I at 313. He recalled that cribs with four to five-foot centers were installed on both sides of the No. 2 belt, and that the mine had abated the Citation by constructing the additional cribs. *Id*.

Citation No. 7558110

Inspector Dixon observed a defective roof condition. GX 8, 13; Tr. I at 315-16. The defect was at crosscut 6 of the No. 2 return entry belt that was used as an alternate escapeway. Tr. I at 317-18.[18] Here he took note of a roof section that was 12 feet by 4 feet ranging from 2 to 14 inches thick. It had "busted and fallen out from between the bolts on the lifeline in this area."

[17] "Return side" and "off side" were interchangeable terms used throughout the hearing. *See, e.g.*, Tr. I at 312.

[18] The mine is required to have a primary escapeway and an alternate escapeway. Tr. I at 317.

Tr. I at 318. The fallen rock had pinned the lifeline[19] against the floor. Tr. I at 318, 322. Anyone using this escapeway, would come into contact with this roof condition. Tr. I at 318. A mine examiner walks this area once a week, and miners participate in an emergency drill twice a year using this escapeway. Tr. I at 319. The defect condition was only 80 feet away from a defective condition noted in the No. 3 entry between the No. 7 and 8 crosscuts. Tr. I at 321.

The Inspector noted here that cutters[20] appeared between the No. 6 and 7 crosscuts along the rib. Tr. I at 322. He found cracks, separations, and cutters in a test hole along one pillar. Tr. I at 324. These cracks measured 14 inches and 30 inches. *Id.* They indicated clearly that the roof was not adequately supported, and that a portion of beam from the pillar block was failing. Tr. I at 325.

Inspector Dixon marked the defect as reasonably likely to result in permanently disabling injuries. Given the cracking in the roof, there was a reasonable likelihood that portions of roof would fall and injure a miner, resulting in broken bones. Tr. I at 326-27. He concluded that the weekly examiner, or anyone doing routine maintenance or rock dusting, was at risk. Tr. I at 327. He found that the violation resulted from moderate negligence. Deteriorating roof conditions "had been there for weeks" and therefore an examiner or miner moving through the area would have noticed it. Tr. I at 327-28. The Inspector also viewed a portion of fallen roof at the No. 1 entry at crosscut 6 as "an indication of deterioration that was occurring in this area which carried over to the No. 3 entry." Tr. I at 328. No cribbing and no metal straps had been installed in this area at the time of the inspection. Tr. I at 339-40.

On cross-examination, Inspector Dixon testified that cracks in the mine roof here were similar to the condition he cited along the No. 2 belt, leading him to conclude that the condition had existed for several weeks. Tr. I at 336-37. The deterioration led him to conclude that there was moderate negligence. *Id.*

Superintendent Shepherd confirmed that a certified foreman is required to conduct weekly inspections of the "return air courses" and against "hazardous conditions." Tr. I at 341. A foreman also must record the results. Tr. I at 342. Mr. Shepherd co-signs the report. *Id.* He saw that rock had fallen between the bolts and the rib, some of which had advanced to the bolts. Tr. I at 342-43. He did not see the rock hanging down along a pillar block which protruded toward the ground. Tr. I at 343.

Citation Nos. 7558107 and 7558108

Solicitor's counsel moved to consider Citation No. 7558107 (effective ventilation plan) together with Citation No. 7558108 (failure to conduct shift examination). The two Citations are related and should be taken together. Respondent had no objection and the motion was granted. Tr. II at 20-21. The Secretary provided Government Exhibits 16 and 16A, which contain Bardo's

[19] A "lifeline" is a nylon rope that is required to be installed in each escapeway. It is used for directional purposes so miners can find their way out of a mine in an emergency. Tr. I at 318.
[20] A "cutter" is a linear fracture that occurs next to a rib line where roof meets pillar, and is a significant indication that a beam may be failing. Tr. I at 319-320.

mine ventilation plan and a color coded diagram of a continuous miner machine showing locations of necessary sprays, the coal conveyor, and that all 84 sprays must be inspected prior to each lift. Tr. II at 23-34.

Citation No. 7558108

> A person designated by the operator shall conduct an examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan. . . . The examination shall include air quantities and velocities, water pressures and flow rates, excessive leakage in the water delivery system, water spray numbers and orientations, section ventilation and control device placement, and any other dust suppression measures required by the ventilation plan. 30 C.F.R. § 75.362(a)(2).

Inspector Dixon issued Citation No. 7558108,[21] citing an inadequate on-shift examination of dust control parameters[22] in violation of § 75.362(a)(2). GX 7. After conducting a respirable dust survey, Inspector Dixon found two sprays on the continuous miner that were not functioning properly. Tr. II at 10. The dust control plan required a minimum of 60 pounds of water per square inch (PSI), but he found the water pressure level to be only 25 PSI. *Id.* Also, one of the sprays was blown out, leaving an open port in the spray block; another spray was stopped up. *Id.* Inspector Dixon issued the Citation because Bardo should have discovered these conditions during an on-shift examination. Tr. II at 10-11. The facts and circumstances are detailed below.

Bardo's examiners mark the date and time of on-shift exams that are completed on a section of conveyer belt and initial next to the date and time. Tr. II at 14-15. Inspector Dixon examined the board for the last on-shift inspection, noting the date, time, and initials designating completion of the examination. Tr. II at 16. He believes that be heard verbal affirmation that the on-shift examination was completed so that he could begin his inspection. But he could not recall who at was. Tr. II at 35, 39. Inspector Dixon recalled that Mr. Shepherd and the continuous miner operator were with him when he heard that the machine was ready to mine. Tr. II at 39. Neither Mr. Shepherd, nor the machine operator, nor anyone else in the section, had warned that the continuous miner was not ready to be inspected. Tr. II at 71. In confirming the date, time, and the initial board, Inspector Dixon testified that all this had indicated to him that the "continuous

[21] All transcript references for the remaining citations in this summary are found in Volume II of the transcript. Citation No. 7558108 was the first violation discussed on the second day of this hearing, prior to Citation No. 7558107. The citations were considered in the order in which they were presented.

[22] Dust control parameters are incorporated into a mine's ventilation plan, which prescribes the methods that operators use to control dust in the mine atmosphere in order to prevent miners' exposure to excessive amounts. Tr. II at 9.

miner was ready to begin producing coal," and therefore was ready for inspection. Tr. II at 39-40.

Inspector Dixon testified on dust control regulations. Tr. II at 17. Miners could suffer respiratory injury from coal dust in the form of lung diseases, monocosis, silicosis, and black lung. *Id.* Citation No. 7558108 reflects conditions that are reasonably likely to result in a permanently disabling injury that would affect the people working in the affected area. GX 7; Tr. II at 18-19. The condition was marked as significant and substantial with moderate negligence. Tr. II at 19. Inspector Dixon concluded that the operator should have had knowledge that this condition existed. *Id.*

Citation No. 7558107

Failure to Follow Ventilation Plan

> The operator shall develop and follow a ventilation plan approved by the district manager. The plan shall be suitable to the conditions and mining system at the mine. 30 C.F.R. § 75.370(a)(1).

Inspector Dixon issued Citation No. 7558107 for Bardo's failure to comply with the mine's ventilation plan. GX 6. As noted in Citation No. 7558108, one spray on the continuous miner was missing while another was inoperative, which were the bases for issuing both Citations. Inspector Dixon noted that the continuous miner had a series of sprays on it placed in a pattern across the heads of the machine. GX 16A; Tr. II at 26. The machine contained three spray blocks designated A, B, and C. Spray Block A was comprised of three smaller blocks running along the atop the cutting heads of the miner, each block containing five sprays, for a total of 15 sprays. Tr. II at 26-27. Spray Block B was comprised of two blocks with five sprays each, located under the left and right side of the head of the miner. Tr. II at 29-30. Spray Block C had three blocks of three sprays each. GX 16A. Two were located at the back of the pan, one on each side; the third was in the conveyor. GX 16A. The inoperable spray was located in Spray Block C on the back of the pan, while the missing spray was located in Spray Block A. GX 16A.

Inspector Dixon opined that it was important for all 34 to work simultaneously because sprayed water is the main dust suppressant. Tr. II at 32. All 34 sprays had to be functioning prior to each "lift of coal."[23] Tr. II at 63. The dust control plan required that sprays operate at a minimum water pressure of 60 PSI. Tr. II at 10. Inspector Dixon measured the miner's water pressure on the miner at 25 PSI. Tr. II at 33. He explained that the missing spray caused a decrease. The decrease in water pressure was a result of water flowing out of a port. *Id.*

The Citation indicated it was reasonably likely to cause a permanently disabling injury such as lung disease or black lung. Tr. II at 37. Inspector Dixon testified that his dust survey on

[23] A "lift of coal" is the run that the continuous miner takes along the coal seam before backing up and starting again on another run. Tr. II at 63.

the date of this violation showed .17 milligrams, a calculation well below the 2.0 milligram allowable limit. Tr. II at 68.[24]

He concluded that this condition would affect five miners, the number of miners in the area of the machine cutting coal. Tr. II at 38. He concluded that the condition was moderate negligence since it should have been detected during on-shift examination. *Id.* Bardo did abate the Citation by replacing the missing spray, fixing the inoperable spray, and increasing the water pressure to 65 PSI. *Id.* Bardo also adjusted the booster pump to insure reaching the proper pressure. Tr. II at 67.

Bardo next called Randall (Randy) Bowman[25] to testify. Mr. Bowman had 25 years' experience in mining, and he operated continuous miners for the past 18 years. Tr. II at 74. Mr. Bowman worked at Bardo No. 1 where he operated the continuous mining machine. Tr. II at 75. On November 20, 2007, he was conducting dust parameters on the continuous miner prior to Inspector Dixon's examination. Tr. II at 79. He testified that the continuous miner stood 150 feet from the working face. Tr. II at 77. While operating, the sprays would emit loud hissing/spraying sounds that could be heard from 70 feet away. Tr. II at 78. If these sprays were not working, it would be obvious. Tr. II at 78. It would not be difficult to tell the difference between 25 and 60 PSI of water pressure. *Id.*

When Inspector Dixon arrived at the location, Mr. Bowman was conducting his on-shift examination. Tr. II at 79. An electrician and two workers were also present. *Id*. Mr. Bowman testified that he did not tell the Inspector that his inspection was completed and that he was ready to put the machine into operation. *Id.* But on cross-examination, Mr. Bowman admitted that after he completed his examination, he told the Section Foreman that the exam was complete. Tr. II at 80. The Foreman marked the date and time and initialed on the board provided. *Id.*

Superintendent Shepherd testified that he did not hear anyone say that Bardo's examination was completed. Tr. II at 84. He agreed that the loud noise of the sprays' hissing sound was an indicator of a drop in water pressure. Tr. II at 86. When the miner machine is 30 feet from the face, the operator turns on the sprays to wet the approach. Tr. II at 87. While moving these 30 feet with the water pressure on, a reduction in PSI would be obvious. *Id.* If such an event were to occur, the mining machine "would be backed up and checked." *Id.* He opined that one malfunctioning spray would affect the overall operation. Tr. II at 86.

Mr. Shepherd also confirmed that someone told Inspector Dixon that the continuous miner was ready to run. But he was unsure who might have said that "we're about ready." Tr. II at 88. Mr. Shepherd was referred to his deposition, where he testified that Trent Waller, the third shift electrician, told Inspector Dixon they were ready, Tr. II at 90. But Mr. Bowman, who was examining the dust parameter, still had the spray out and was not ready: "I remember Trent

[24] MSHA's measurement at the Bardo No. 1 Mine on July 31, 2007, showed the largest milligram standard to be .47 milligrams, four times below the 2.0 milligram limit. Tr. II at 68.
[25] Mr. Randy Bowman is not related to Mr. James (Jim) Bowman, Respondent Bardo's in-court representative in this matter. Tr. II at 74.

saying, yeah, we were ready; but I never remember Randall [Bowman] saying anything." Tr. II at 90. Trent was not designated to declare when the on-shift examination was complete. Tr. II at 91.

Citation Nos. 7522912 and 7522915

Defective Safeguards of Machine Parts

> Gears; sprockets; chains; drive; head; tail; and takeup pulleys; flywheels; couplings, shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded. 30 C.F.R. § 75.1722(a).

Inspector Dixon issued Citation No. 7522912 because a "guard that covers the discharge roller drive and drive sprocket and shaft was missing." Tr. II at 96; GX 2. The discharge roller on the end of the feeder is the area where mined coal is deposited. Tr. II at 98. A conveyor chain runs through the center of the feeder, and a guard is installed to cover the moving parts of the shaft, sprocket, and drive chain. Tr. II at 98-99. A valve body with control levers and a panic bar are both located near the moving parts. Tr. II at 99-100. Inspector Dixon testified that the control levers control the functions of the machine and the panic bar provides an emergency shutoff switch. Tr. II at 100; *see also* Demonstrative Evidence GX 20 (schematic drawing of machinery to be graded).

Inspector Dixon found this violation to be significant and substantial and the result of moderate negligence. GX 2. He found the violation to be reasonably likely to result in a permanently disabling injury. GX 2. He concluded that the exposed moving parts created an "entanglement-type" hazard that could lead to permanently disabling injuries such as broken hands, broken bones, or dismemberment of fingers. Tr. II at 105. Miners using the valve body controllers and the panic bar would be in the area, as would miners performing routine maintenance and cleaning work, such as shoveling out under the feeder. *Id.* He testified that "the operator should have seen this condition. The operators must do a weekly examination on electrical equipment. . . . [I]t should have been corrected." Tr. II at 108. To abate, the operator installed a guard over the cited area while Inspector Dixon was still in the mine. Tr. II at 108-09.

On cross-examination he admitted that the end of the shaft with six Allen bolts was exposed, but that the sprocket itself was not visible. Tr. II at 110. He agreed that the sprocket and the chain to the sprocket were therefore guarded. *Id.* Only the end of the shaft with the six bolts was exposed. Tr. II at 110-11. He confirmed that no miner at Bardo was assigned regular duties as the feeder operator. Tr. II at 112. He estimated that the shaft was about four to five feet from the ground. *Id.*

Roger Baker testified for Bardo. He had 33 years' mining experience and worked as a maintenance foreman at Bardo. Tr. II at 115-16. Mr. Baker testified that the drive sprocket and the sprocket chain are located behind the hub that is covered by a guard. Tr. II at 126. He also

testified that the speed of the feeder is very slow. Tr. II at 126. The hub contains shear pins and protects the machine against damage. Tr. II at 125. In order to be caught by the exposed bolts, a person would have to reach over the top of the valve chest, then behind it. Tr. II at 130. He did not believe there was a threat to injury from the operating feeder. Tr. II at 131.

Citation No. 7522915

The final citation was also issued for a failure to safeguard as required by 30 C.F.R. § 75.1722(a). GX 4. Inspector Dixon observed that a portion of the guard on the oil bath[26] covering the chain and sprocket drive box on the No. 3 head drive was missing. Tr. II at 136; GX 4. The guard had worn away, thereby exposing the chain and sprocket drive. *Id.* The head drive turns the conveyor belt. Tr. II at 136. In order to keep the belt functioning properly, there is a pool of oil through which the chain turning the belt passes. *Id.* A piece of conveyor belt had been placed over the unguarded portion of the oil bath. Tr. II at 139. Inspector Dixon concluded that the exposed sprocket and chain on the oil bath posed a hazard because "they are constantly rotating while the head drive is running." Tr. II at 140, 141. He testified that belt examiners and miners conducting maintenance on the head drive were routinely in the area. Tr. II at 141. Also, miners take water for disposal from a 12-inch depth beneath the head drive, thus putting them next to an exposed moving chain and sprocket. *Id.*

Inspector Dixon further concluded that Bardo was aware of this condition since it had placed part of a conveyor belt to "cover" the exposed area. Tr. II at 142. Exposure on the left side of the metal frame was four inches wide. Tr. II at 143. Exposure behind the belt left an exposed gap three and one-half inches wide. *Id.* The gap "tapered off at the end of the oil bath." *Id.* The violation was reasonably likely to cause permanent disabling dismemberment-type injuries. Tr. II at 143-44. In finding moderate negligence, at least two examinations, which occur daily, should have discovered what was "pretty obvious." Tr. II at 144-45. To abate the Citation, Bardo welded pieces of metal over the exposed parts. Tr. II at 145.

On cross-examination, Inspector Dixon testified that the area where the conveyor belt was hanging over the oil bath was sufficiently guarded until a permanent solution was found. Tr. II at 149. He testified that the condition was still problematic because it could disengage. *Id.* While a person's entire body would not fall into the unguarded area, a person could come into contact with the hazard while reaching to break a fall. Tr. II at 150.

Superintendent Shepherd testified for Bardo. He recalled that the guard covering the drive sprocket of the No. 3 belt drive was where "[t]he chain had rubbed a hole through the side of the middle guard on . . . [the] oil bath. . . . It rubbed a hole where the chain comes around the bottom of the oil bath [which] was probably a couple inches wide." Tr. II at 153-54. Bardo was building a new oil bath or ordering one and the belt was used as temporary coverage. Tr. II at 154. He estimated that the unguarded area was two to three inches wide and three feet long. *Id.* He did not think that a miner would have reason to be near the exposed guard. Tr. II at 155.

[26] The "oil bath" turns the tandem rollers inside the head drive; a "head drive" is a unit that pulls a conveyor belt and enables the belt to turn and rotate. Tr. II at 136.

Mr. Shepherd testified that the belt covered the exposed opening. Tr. II at 156. The beltline only was used temporarily just before Inspector Dixon arrived. Tr. II at 157. Apparently, less than a week had passed between the time the problem was noticed and the problem was remedied. Tr. II at 159.

Summary of Secretary's Arguments

Unsupported Roof Systems

In Citation No. 7502246 Bardo failed to comply with 30 C.F.R. § 75.202(a) in four of the roof violations at issue. The Secretary asserts that a reasonably prudent person in the mining industry would have immediately removed the loose draw rock that Inspector Doan discovered. *Canon Coal Co.*, 9 FMSHRC 667, 668 (Apr. 1987); Secretary's Proposed Findings of Fact, Brief and Argument 20-21. Significant and substantial applies to the draw rock spanning an area of 120 feet that is used by miners six times each day. Sec'y's Br. 22. Noting the deteriorating roof, Inspector Doan's designation of moderate negligence is convincing and will be accepted.

The Secretary argues a similar rationale for the remaining three charges under § 75.202(a). None passed the reasonably prudent person test; in each case, hazardous conditions reported had a reasonable likelihood of contributing to a serious injury; and all adverse conditions should have been detected. Citation No. 7522914 charges an inadequate roof support was blocking two hanging rocks. Sec'y's Br. 28-29; Tr. I at 269. Miners and safety examiners traverse the area twice each day. Sec'y's Br. 29. Fallen portions of the roof indicated that this should have been discovered during a shift examination. *Id.* at 30. Citation No. 7522917 charges a life-threatening rock had fallen between roof bolts along a conveyor belt. *Id.* at 31. Deteriorating roof conditions were reasonably likely to result in serious injury and should have been discovered and corrected during a shift examination. *Id.* at 32. And Citation No. 7558110 charged that a large rock had fallen between the roof bolts and pulled a lifeline to the ground. The fallen rock showed cracks and cutters indicating that the roof was unsafe. *Id.* at 33. Such conditions were extensive, all failed the reasonably prudent person test, all were reasonably likely to result in serious injury, and all should have been discovered and corrected. *Id.* at 34-35.

Disregarded Roof Plan

Citation No. 7522909 charged violations of the roof control plan required by 30 C.F.R. § 75.220(a)(1), citing *Jim Walter Resources, Inc.*, 9 FMSHRC 903, 907 (May 1987) (standard for finding violation of mine plan). The Secretary presented Bardo's roof control plan mandating that an ATRS be set firmly against a roof. Proof was presented that a roof bolter operator violated this provision. Sec'y's Br. 24-25. Operation of a roof bolter without the ATRS set firmly against the mine roof exposed operators to falling rock. *Id.* at 25-26. Superintendent Shepherd agreed that a hazard was created by an unsupported roof. The Secretary accepted Inspector Dixon's high negligence designation because the roof bolter was equipped with 24-inch extensions which indicated that the operator knew the ATRS could not reach the mine roof. *Id.* at 26. Other areas of mine roof were unreached by the ATRS. *Id.* at 27. Despite evidence of the ATRS's inability to reach the roofs, miners were permitted to continue to install roof bolts without adequate protection.

Disregarded Dust Control

Citation No. 7558107 (related to Citation No. 7558108) alleged a failure to comply with a ventilation plan. Bardo's failure to ensure that sprays were functioning constituted a violation of 30 C.F.R. § 75.370(a)(1). Significant and substantial and moderate negligence designations were warranted for reasons similar to those the Secretary offers in support of Citation No. 7558108, which was issued for failure to complete an examination of dust control parameters in accordance with 30 C.F.R. § 75.362(a)(2). Sec'y's Br. 35. Inspector Dixon gave the mine operator an opportunity for pre-examination of all hazards before beginning his own inspection. Still, he discovered two water sprays that were malfunctioning and measured only 25 PSI water pressure. *Id.* at 36. Mr. Shepherd had not informed Inspector Dixon that their inspection was incomplete. *Id.* at 37. The situation was designated serious and significant and the failure was reasonably likely to result in serious illness, injury, or death to miners. *Id.* The moderate negligence designation was appropriate because Bardo had certified that an examination had been conducted prior to Inspector Dixon's exam and no one had objected, which indicates that Bardo knew or should have known of the hazardous condition. *Id.* at 38.

Unguarded Machinery

Citation Nos. 7522912 and 7522915 charge Bardo with violations of 30 C.F.R. § 75.1722(a). Citation No. 7522912 charges Bardo with failing to provide an adequate guard on a Stamler Feeder. Inspector Dixon discovered that a guard cover for the discharge roller and drive sprocket shaft was missing. A valve with control levers was located near the exposed portion. Sec'y's Br. 42. The hazard was designated significant and substantial since a panic bar and valve body were in close proximity to exposed moving parts. A miner using either device would likely make contact with the unguarded portion and suffer serious entanglement injuries. *Id.* at 43. The Citation charged moderate negligence because the Stamler Feeder has been equipped with a guard from the manufacturer with grooves allowing the guard to be removed. In Citation No. 7522915, the guard covering the chain and sprocket box was missing, and moving machine parts were exposed in violation of the designated standard. *Id.* The Respondent knew that the guard was missing. The part was on order while the head drive was still being used. *Id.* at 45. The significant and substantial designation with moderate negligence should be affirmed and upheld for reasons akin to those articulated for Citation No. 7522912, *supra.*

Summary of Bardo's Reply Arguments

Positive Roof Plan

Bardo argues that it complied with § 75.202(a) because its miners could work safely in the cited areas. Respondent's Post Hearing Brief Findings of Fact and Conclusions of Law *passim* (collectively "Bardo Brief"). Citation No. 7502246 does not allege the roof was falling. While some loose rock was in the area, they were small in comparison with larger rocks that were later pulled down. The situation was not found to be significant and substantial because the loose rocks were small. Bardo Br. at 24. In Citation No. 7522914, the roof was supported and the rock was lying on supports that were to hold the roof. The "loose roof" area was not where

miners work so there was no likelihood of injury. In Citation Nos. 7522917 and 7558110, the roof material was found on the floor. It was in an area that was traveled infrequently. It did not pose a hazard because it had already fallen without incident. *Id.* at 20. The Citation was not designated significant and substantial because it was not reasonable to expect serious injury from a rock that was already fallen. *Id.* at 24.

Properly Positioned ATRS

Bardo contends that Citation No. 7522909 cannot support a penalty because Bardo had complied with § 75.220(a)(1). Bardo argues that the ATRS was properly placed. Bardo Br. 20. According to Bardo, Inspector Dixon's testimony was mixed and conflicted. The evidence shows that the mining height in the No. 5 entry at 9 feet 5 inches. The ATRS could reach up to 9 feet 11 inches. The highest measurement the Inspector took was 10 feet 2 inches. He testified that one halo ring was touching the roof and the other was not, which indicated that there must have been some difference in mining height. *Id.* at 21. Assuming the Inspector was correct in his measurements, the ATRS would still have been within 3 inches of the roof which would have provided canopy protection. *Id.*

Bardo also contends that the ledges along the mine ribs evidenced that the operator was ramping up to reduce the mine height so that roof bolts could be safely installed. *Id.* A significant and substantial designation is unwarranted because three roof bolts had been installed in the area. The roof was supported 6 feet from the right rib and 3 feet from the left rib. *Id.* at 24. Three of five roof bolts were installed and the halo ring was no more than three inches from the metal strap, showing that there was no likelihood that the roof would fall. *Id.* Bardo's argument is not supported by the record.

Adequate Maintenance and Dust Control

Bardo asserts that Citation No. 7558107 cannot be sustained for lack of evidence of violating § 75.370(a)(1). Miners were working to clean and repair water sprays in accordance with the standard. Bardo Br. 21. As Bardo would have it, coal removal operations had not yet started at the time of the Inspector's examination. The safety standard and the mine's dust control plan require that the water sprays be operating before production begins. *Id.* at 22. If defects are repaired prior to production, there can be no violation. *Id.* That argument doesn't fit because the work was not completed when the Inspector began his checks of the system. But, this is where the story becomes murky. Bardo asserts three miners were cleaning the 34 water sprays when the Citation was issued. *Id.* Bardo also asserts that there is no evidence that its designee Mr. Bowman had completed the on-shift examination. *Id.* at 23. There also is no evidence that the Foreman received a report from Mr. Bowman. *Id*. But convincing contrary evidence indicates that Mr. Dixon acted reasonably in assuming he had been cleared to begin the inspection. *See* Summary of Secretary's Arguments, *supra*.

Adequate Machinery Guards

Finally, as to Citation Nos. 7522912 and 7522915, Bardo argues that it has complied with § 75.1722(a). Bardo claims that the cited areas were guarded as required by the regulation. In

Citation No. 7522912, Inspector Dixon conceded that the discharge roller and drive sprocket were guarded, that the end of the shaft was neutralized by its location, and that miners could not make contact with it. Bardo Br. at 23-24. In Citation No. 7522915, the oil bath was guarded by a one-half inch rubber belt as a temporary guard. *Id.* at 24. Since the discharge roller and drive sprocket were guarded in Citation No. 7522912, and a piece of the conveyor belt was guarding the area cited in Citation No. 7522915, neither of these violations justified being designated significant and substantial. Therefore, no penalties should be assessed.

CONCLUSIONS OF LAW

Standard of Proof

The Secretary has the burden of proving all elements of each alleged violation by a preponderance of the evidence. *Steadman v. S.E.C., 101 S. ct. 999, (1981) In re: Contests of Respirable Dust Sample Alteration Citations,* 17 FMSHRC 1819, 1838 (Nov. 1995), *aff'd*, *Sec'y of Labor v. Keystone Coal Mining Corp*., 151 F3d 1096 (D.C. Cir. 1998); *ASARCO Mining Co.*, 15 FMSHRC 1301, 1307 (July 1993); *Garden Creek Pocahontas Co.,* 11 FMSHRC 2148, 2152 (Nov. 1989); *Jim Walter Resources, Inc.*, 9 FMSHRC 903, 907 (May 1987). The Secretary also has the burden of going forward with the evidence. *U.S. Dep't of Labor v. Greenwich Collieries,* 114 S. Ct. 2251, 2252 (1994).

Legal Standards

Reasonable Prudent Person

Factors that a reasonably prudent person would know include accepted safety standard requirements that are unique to the mining industry, and surrounding conditions at the mine. *BHP Minerals Int'l, Inc.*, 18 FMSHRC 1342, 1345 (Aug. 1996). The standard is used to test conclusions reached by an objective observer with knowledge of the relevant facts. *U.S. Steel Mining Co. L.L.C.*, 27 FMSHRC 435, 439 (May 2005) (quoting *U.S. Steel Corp.*, 5 FMSHRC 3, 4-5 (1983)). The standard is always applied to the totality of the factual conditions and circumstances involved. *Id.*; *see also Asarco, Inc.*, 14 FMSHRC 941, 948 (June 1992).

Significant and Substantial

Section 104(d) of the Mine Act, 30 U.S.C. § 814(d), designates more serious violations as "significant and substantial" where facts surrounding the violation show that there exists a reasonable likelihood that the hazard to which the violation contributed will result in an injury or illness of a reasonably serious nature. *Cement Div., Nat'l Gypsum Co.*, 3 FMSHRC 822, 825 (Apr. 1981).

The Commission has definitively held:

> In order to establish that a violation of a mandatory safety standard is significant and substantial under *National Gypsum*, the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard—that is a measure of danger to safety—contributed to by the violation; (3)

> a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

Mathies Coal Co., 6 FMSHRC 1, 3 (Jan. 1984); *accord Buck Creek Coal, Inc. v. MSHA*, 52 F.3d 133, 135 (7th Cir. 1995); *see also Austin Power, Inc. v. Sec'y of Labor*, 861 F.2d 99, 103 (5th Cir. 1988) (adopting *Mathies* criteria).

Negligence

The Secretary defines negligence as "conduct, either by commission or omission, which falls below a standard of care established under the Mine Act to protect miners against the risks of harm." 30 C.F.R. § 100.3(d) (2011). Under the Mine Act a "mine operator is required to be on the alert for conditions and practices in the mine that affect the safety and health of miners and to take steps necessary to correct or prevent previous hazardous conditions or practices." *Id.* Moderate negligence is found when an "operator knew or should have known of the violative condition or practice, but there are mitigating circumstances," while high negligence exists when an "operator knew or should have known of the violative condition or practice, but there are *no* mitigating factors." *Id.* (emphasis added).

Penalty Assessments

The Judge determines the appropriate penalty amounts *de novo.* In considering penalties, she/he must provide a clear explanation of any substantial deviation from the Secretary's proposed penalties. *Cantera Green*, 22 FMSHRC 616, 622-23 (May 2000). However, Commission Rule 2700.30(b) instructs that "[i]n determining the amount of penalty, neither the Judge nor the Commission shall be bound by a penalty proposed by the Secretary." 29 C.F.R. § 2700.30(b). Therefore, the Judge must independently determine an appropriate penalty.

Consideration must be given to the following factors contained in section 110(i) of the Mine Act:

> the operator's history of previous violations, the appropriateness of such penalty considering the size of the business of the operator's charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and 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 parties have stipulated under section 110(i) that (1) Bardo is a large operator, (2) the proposed penalties are appropriate for its size, and (3) the proposed penalties will not affect the ability of Bardo to continue in business. Tr. I at 14. The Presiding Judge finds that Bardo has demonstrated good faith in abating the Citations, and that there is no showing that Bardo had more or fewer violations than would be expected of a large operator.

Analysis of Violations

Citation Nos. 7502246, 7522914, 7522917 and 7558110

Recognizable Roof Hazard Conditions

Four citations were issued for violations of the roof condition standard under § 75.202(a). It is found that the Secretary has proven the violation of each citation. The preponderance of the evidence shows that Bardo failed to comply with the reasonably prudent test discussed above. Therefore, the Court upholds the violations alleged in each citation, as well as each proposed significant and substantial and moderate negligence finding. Evidence and arguments are discussed below.

Inspector Doan's testimony with regard to Citation No. 7502246 conveyed the extensiveness, obviousness, and duration of the hazardous condition. Loose and overhanging draw rock did not occur in one isolated place. Tr. I at 68, 70. Separated rocks found in a number of areas ranged in weight from 6 to 325 pounds. Tr. I at 76, 148, 150. The expanse of the condition indicated that it existed for a substantial period of time. Inspector Doan and Superintendent Shepherd noticed this hazard simultaneously. Immediate action to abate was taken without objection. Attempts by Mr. Shepherd to downplay the extensiveness of the condition were unconvincing. His testimony that loose rocks were small, only comprising a thin layer along the roof, and were difficult to extricate from the roof, did not convince. None of Bardo's arguments refute Inspector Doan's consistent and credible testimony.

Bardo's argument that the mine was in compliance with its roof control plan is neither explicated nor persuasive and is rejected. The Citation was not for violating the roof control plan. Tr. I at 102. The Citation was based on Bardo's failure to provide measures that a reasonable person familiar with the mining industry would take. Inspector Doan identified a hazardous roof condition. Rocks were separated from the roof. The extensiveness of the condition was ascertained prior to issuance of the Citation. Yet, Bardo failed to take steps that a reasonably prudent person familiar with the mining industry would have taken when faced with such hazardous circumstances.

Citation Nos. 7522914, 7522917, and 7558110 are also proven. Two large portions of rock had broken away from the roof leaving an eight-inch gap. Tr. I at 273-74. Two large rocks had dislodged and were hanging from the roof. Tr. I at 269, 277. Other portions of the roof had fallen. Tr. I at 277-78. Dislodged rocks gave a reasonably ascertainable indication to miners and on-shift examiners that the Bardo mine roof was seriously deteriorating. Mr. Shepherd confirmed that he saw fallen rock and cracks in the roof. His exculpatory testimony—that this evidence of deterioration did not mean that there were problems with the roof—does not outweigh Inspector Dixon's delineated conclusions to the contrary and fails to convince this fact finder. Tr. I at 313.

The sizes of rock described as detached or fallen, together with obvious vertical cracks and cutters, constituted conditions that were obvious, pervasive, extensive, and ongoing. The Inspectors' testimonies were not rebutted. They established that the deterioration was not remedied prior to issuance of the Citations. The conditions found showed numerous problems

that were reasonably ascertainable prior to inspection. A reasonably prudent person familiar with the mining industry would have taken the necessary remedial steps. Bardo failed to do so.

Significant and Substantial

Each citation described conditions found at Bardo's mine that violated the safety standard prescribed by § 75.202(a). The hazard—a roof fall—was prominently noted in each citation. The significant and substantial designations in Citation Nos. 7522914, 7522917, and 7558110 are affirmed and approved. Citation No. 7522914 involved two large dangling pieces of rock that hung over the No. 5 belt and its offside. Citation No. 7522917 involved an even larger rock that had fallen along a conveyor belt. Inspector Dixon noted evidence of roof deterioration in areas under which miners, on-shift examiners, and belt shovelers regularly pass. These roof problems in areas being mined were reasonably likely to result in an injury-producing event, and any resulting injuries would be serious.

In Citation No. 7558110, rock had fallen on a lifeline, and cutters and vertical cracks were found indicating problems with the roof near an alternate escapeway. That area is used in the event of an emergency. The nature of the hazard and the critical need for the area's access makes it reasonably likely that an injury could have occurred had the conditions continued. Such injuries would be of a reasonably serious nature.

Moderate Negligence and Mitigation

The moderate negligence designations for the above violations are approved. The convincing case presented by the Secretary proved that Bardo knew or should have known of the violations. The hazardous conditions in areas frequented by miners show further that Bardo should have known of each hazard, with one exception. In Citation No. 7502246, the hazardous condition found was only visible when exiting the mine. A cantilever condition reduced all ability to observe one angle of the defect which constitutes a mitigating factor. Tr. I at 105-06.

In Citation Nos. 7522914 and 7522917, conveyor belts left uncovered were observable only on the offside of the belts, an area that is less frequently populated than the onside. This positioning of the hazards mitigates because fewer miners could be aware of the hazards than if they were onside of the belt.[27] Also, the location of the hazard in Citation No. 7558110 is a mitigating factor since the escapeway is only traveled weekly. Mitigating circumstances were present in each of the three violations. The Inspectors' designations of moderate negligence are accepted for the four violations of § 75.202(a).

[27] There are differences between "offside and onside" when belt factors are applied in analyzing negligence and mitigation. But, the distinction has no place in significant and substantial analysis. Even if fewer miners are exposed to a hazardous condition, miners were present and, as an absolute, were exposed to hazard and risk of injury.

Penalty Determinations

The Secretary proposes a penalty of $4,689.00 for Citation No. 7502246. The proposed penalty is appropriate. Cantilevering of the draw rock mitigates the negligence and such mitigation was taken into account by the Secretary in concluding that the violation showed just moderate negligence. But, because the area was frequently traveled, its gravity precludes any lowering of the penalty. Therefore, after considering the section 110(i) factors, a penalty of $4,689.00 is assessed.

The Secretary proposes penalties of $3,689.00 each for Citation Nos. 7522914 and 7522917. Each of the cited hazards was located on the offside of the belt which slightly diminishes their gravity. Therefore, a lesser penalty of $3,000.00 is assessed for each citation for a total of $6,000.00.

The Secretary proposes a penalty of $6,996.00 for Citation No. 7558110. The hazard's location presents a substantial mitigating factor which affects both the negligence and gravity of the hazardous condition. The area was not frequently traveled which lowers the negligence of failing to remedy the hazard, and also lowers any likelihood of injury. Therefore, a penalty in the lesser amount of $3,500.00 is assessed for Citation No. 7558110.

Citation No. 7522909

Roof Control Plan

Bardo failed to follow its roof control plan. The plan required that any roof bolter be set firmly against the mine roof. Citation No. 7522909 alleges that it was set in an ineffective position while roof bolting was undertaken. Tr. I at 178-79. Two bolts were installed on the right side while the left side had one bolt installed with a second in process of installation. Tr. I at 180. At a roof height of ten feet, two inches, the machine could not have reached the roof, even with an extension. Tr. I at 188-89. Inspector Dixon saw evidence of ramping up which indicated other efforts being made to reach the roof. This use of multiple remedies is a strong indication that Bardo recognized its roof bolter had a problem that needed a solution.

Yet, Bardo disputes the plain meaning of "firmly against the roof" in disputing the Inspector's determination. This Judge agrees with Inspector Dixon. Simply stated, the roof bolter must be in contact with the roof. The roof bolter must be placed in a position it will not shift. Tr. I at 208.

There is competing testimony on the whether the roof bolter reached the roof. Inspector Dixon saw no blocks reaching the roof on the right side, and he saw just one of four blocks touching on the left. Mr. Shepherd saw three of four blocks touching the roof. He estimated the height as between 8 and 9 feet; Inspector Dixon calculated of 10 feet 2 inches. Tr. I at 256. Inspector Dixon's testimony tends to be credible. Both Dixon and Shepherd acknowledge that the bolter was not flush with the roof which shows that it was not set firmly and would not protect the miners who were bolting the roof. Mr. Shepherd produced no written note or other

writing. Inspector Dixon on the other hand had made ample notes and prepared a same day Citation Report which did not conflict with his notes.[28]

Significant and Substantial

Citation No. 7522909 constituted a violation of a mandatory safety standard. *See Mathies*, 6 FMSHRC at 3. The fallen roof was caused by a failure to follow the roof control plan. This hazard was reasonably likely to result in injury. The roof bolter position was on an unstable footing and was not firmly set against a cracking roof. Tr. I at 190. Bardo's failure to comply with its roof control plan in an area containing a substandard roof was reasonably likely to produce an injury that would be serious.

High Negligence

Inspector Dixon's finding of "high negligence" is approved and accepted. There was evidence that Bardo either knew or should have known of the condition, but there was no mitigating evidence presented. Tr. I at 193. Proof shows that Bardo made efforts to overcome the problem and therefore was aware of the problem. Yet Bardo continued to bolt the roof using a roof bolter that could not support a roof that was in the subpar condition.

Penalty Determination

The Court finds Inspector Dixon's testimony to be more credible regarding the height of the roof and the extent to which the bolter failed to reach the mine roof. Bardo had ramped up the mine floor which is convincing evidence that its problem was known. Based on the high negligence and the significant and substantial nature of this violation, the penalty is set as proposed by the Secretary in the amount of $31,988.00.

Citation Nos. 7558107 and 7558108

Citation No. 7558107 was issued for Bardo not meeting its dust control ventilation plan, and Citation No. 7558108 followed an inadequate on-shift examination, in violation of §§ 75.370(a)(1) and 75.362(a)(2), respectively. Both violations involved two malfunctioning sprays on a continuous miner. *See* GX 16A (demonstrative description of machine). Pressure was found by Inspector Dixon at 25 PSI, far below the plan's accepted minimum of 60 PSI. Tr. II at 10.[29]

A question remains as to whether Inspector Dixon prematurely began his inspection of the continuous miner machine. Inspector Dixon testified that he properly gave notice of his intentions prior to inspecting. His notes showed that he informed Mr. Shepherd that he would conduct dust and noise surveys and that he checked the preshift/on-shift book, which showed no hazards, both before beginning his inspection. GX 12. He recalls receiving word from an

[28] Inspector Dixon's methodology was to prepare same-day citations immediately following inspection. He relied on contemporaneous notes that he made of potential violations. The Citations and notes together were seen as reliable and regularly prepared as business records.
[29] As noted *supra*, testimony both pro and con is in the second volume of the court transcript.

unidentified person that Bardo had done its pre-exam of the dust parameters. Tr. II at 35. Bardo thinks that because the Inspector cannot identify by name or job title who gave an oral go ahead, there was doubt cast on whether the operator had sufficient time to conduct its own examination beforehand. Tr. II at 47-51. It is evident that Inspector Dixon was not rushing anyone and that he gave Bardo ample time and opportunity to examine the continuous miner. Certainly no one from Bardo objected when Inspector Dixon began his inspection. Neither Shepherd nor Bowman took notes that would contradict Inspector Dixon's clear recollection that no objection was voiced to starting his examination. Neither Shepherd nor Bowman denied that a spray was malfunctioning, or denied that another was missing. Bardo's unsupported argument is unpersuasive. It certainly cannot rebut unrefuted evidence that sprays on Bardo's continuous miner machine were missing, inoperable, or malfunctioning, resulting in a spray PSI of 25, below a set minimum PSI of 60.

Bardo presented no evidence or testimony denying that sprays were inoperable, or that the PSI level was at 25 instead of the required 60. The Secretary has established these violations by a preponderance of the evidence. Bardo certified that an examination had taken place and never objected to so certifying.

The two violations are linked. Significant and substantial designations with moderate negligence are properly assigned to both Citations. The failure to conduct an adequate on-shift examination allowed the water pressure to measure substantially below the 60 PSI level required in the mine's ventilation plan and increased the exposure to coal dust inhalation. Bardo management had sufficient time to check the continuous miner and discover conditions of inoperable sprays and low water pressure. However, the broken and non-functioning sprays were located in spray blocks that may not have been readily visible to a pre- or on-shift examiner. Bardo had conducted the examination, but an adequate examination, if made prior to Inspector Dixon's inspection, should have caught these hazardous conditions.

Penalty Determination

The Secretary has proposed penalties of $14,373.00 and $6,458.00 for violations of Citation Nos. 7558107 and 7558108. Based on the above findings and the mitigating circumstance that the broken sprays were not readily visible, Bardo is assessed lesser penalties of $10,000.00 for Citation No. 7558107 and $6,000.00 for Citation No. 7558108.

Citation Nos. 7522912 and 7522915

The last two violations in this docket are considered in tandem. Both are alleged violations of § 75.1722(a) for failing to provide adequate guarding, albeit the two incidents were factually different. The Secretary established that the absence of guarding machinery was properly designated significant and substantial and resulted from moderate negligence. But as explained below, mitigating circumstances present in each violation warrant reductions in penalty.

Citation No. 7522912 charged that a guard covering a discharge roller and drive sprocket shaft on a Stamler Feeder[30] was missing. The discharge roller is located at the end of a feeder. A conveyor chain runs through the center of the feeder. Inspector Dixon found that the lack of a guard created a likelihood of entanglement-type injuries. Although the guard was missing, the drive sprocket and chain on the feeder were covered and that only the shaft with an assembly of six bolts was exposed. Tr. II at 110-11. The lack of a guard in this area exposed miners to entanglement with uncovered moving parts. The hazard was a violation of § 75.1722(a).

Miners performing routine maintenance were exposed to the hazardous condition. Tr. II at 105. Their presence in the area created a reasonable likelihood that any entanglement would result in an injury of a reasonably serious nature. Injuries ranged from broken bones to dismemberment, all of which are injuries of a reasonably serious nature. The moderate negligence designation is accepted and approved, for Bardo either knew or should have known about these unguarded machines parts. However, the covering on the discharge roller, drive sprocket, and a chain constitutes a mitigating factor justifying a reduced penalty.

An analysis of Citation No. 7522915 merits a similar result. The guard on the oil bath covering the chain and sprocket drive box on the No. 3 head drive was found missing, which exposed the chain and sprocket drive. Tr. II at 136. Inspector Dixon noted that a piece of conveyor belt had been placed over an unguarded portion of the oil bath, which provided some protection. Tr. II at 139. However, the remaining exposed parts caused by the missing guard created a hazard which violated § 75.1722(a).

Significant and Substantial

Inspector Dixon cited these hazards as significant and substantial since belt examiners, maintenance miners, and miners accessing water from a 12-inch hole under the head drive would be exposed to the hazard. Tr. II at 141. Anyone kneeling down to get water would use his hand as a brace on the unguarded oil bath. There would be a reasonable likelihood that any entanglement would cause a reasonably serious injury. And even though part of the conveyor belt covered exposed parts, there were still exposures on the left side of the metal frame behind the belt. Such a makeshift effort to cover unguarded parts did not fully protect from injury. Such a condition would be significant and substantial, and it is so found.

Inspector Dixon saw this as an obvious hazard. It was out in the open and only partially covered with a piece of belt. Bardo knew about the problem prior to Inspector Dixon's inspection. Mr. Shepherd admitted that Bardo knew of the condition, noting that only a piece of belt covered the opening. Tr. II at 153-54. Bardo, being aware of the problem, took steps to fix it in part, thus earning a mitigating factor. The moderate negligence determination is partially offset by Bardo's temporary guard which permits a reduction in penalty.

[30] *See* Tr. II at 117 (describing Stamler Feeder).

Penalty Determination

The Secretary proposes a penalty of $3,689.00 for Citation No. 7522912. Mitigating factors warrant a reduction in penalty. Therefore, the penalty is reduced to $2,000.00.

The Secretary proposes a similar penalty of $3,689.00 for Citation No. 7522915. Bardo's makeshift, temporary guard was insufficient, but its attempt to remedy the danger merits a moderate act of negligence for this Citation. Having considered the 110(i) factors and Bardo's moderate negligence, a penalty of $1,000.00 is assessed for Citation No. 7522915.

ORDER

At the hearing, in addition to the citations contested by the operator, the parties presented a proposed settlement of six citations. Tr. I at 10-13. Upon consideration of the 110(i) factors, the settlement approved on-the-word is documented by written order as follows:

Citation No.	**Assessment**	**Settlement Amount**
7503275	$8,209.00	$3,143.00
7522928	$2,901.00	$ 900.00
7522911	$2,473.00	$2,473.00
7522923	$2,106.00	$2,106.00
7522921	$3,996.00	(vacated)[31]
7522924	$3,689.00	(vacated)
TOTAL:	**$23,374.00**	**$8,622.00**

SO ORDERED.

IT IS FURTHER ORDERED that Citation No. 7503275 be **MODIFIED** to reduce the number of persons affected from twelve to four.

IT IS FURTHER ORDERED that Citation No. 7522928 be **MODIFIED** to reduce the number of persons affected from twelve to two.

The following penalties are assessed for the remaining nine citations as analyzed and ruled on in this Decision:

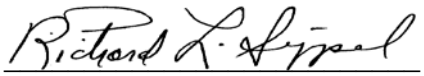
Citation No.	**Assessment**
7502246	$4,689.00
7522914	$3,000.00
7522917	$3,000.00
7558110	$3,500.00

[31] The Secretary's decision to vacate a citation is an exercise of prosecutorial discretion. *RBK Constr., Inc.*, 15 FMSHRC 2099 (Oct. 1993).

7522909	$31,988.00
7558107	$10,000.00
7558108	$6,000.00
7522912	$2,000.00
7522915	$1,000.00
TOTAL	**$65,177.00**

SO ORDERED.

Finally, **Respondent Bardo Mining is ORDERED TO PAY** a total penalty of $73,799.00 within forty (40) days of this decision.[32]



Richard L. Sippel
Administrative Law Judge

Distribution:

Christian P. Barber, MSHA Litigation Backlog Project Manager, U.S. Department of Labor, Office of the Solicitor, 211 7th Avenue North, Suite 420, Nashville, Tennessee 37219-1823

LaTasha Thomas, Esq., U.S. Department of Labor, Office of the Solicitor, 618 Church Street, Suite 230, Nashville, TN 37219

Thomas A. Grooms, Esq., U.S. Department of Labor, Office of the Solicitor, 618 Church Street, Suite 230, Nashville, TN 37219

James F. Bowman, P.O. Box 99, Midway, WV 25878

George Bowman, P.O. Box 99, Midway, WV 25878

[32] Payment should be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P.O. BOX 790390, ST. LOUIS, MO 63179-0390.