FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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April 3, 2014

SIGNAL PEAK ENERGY, LLC, Contestant v. SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Respondent	CONTEST PROCEEDING Docket No. WEST 2012-1063-R Order No. 8475786; 06/13/2012 Bull Mountain Mine No. 1 ID No. 24-01950
SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner v. SIGNAL PEAK ENERGY, LLC, Respondent	CIVIL PENALTY PROCEEDINGS Docket No. WEST 2012-1325 A.C. No. 24-01950-295463-01 Docket No. WEST 2012-1326 A.C. No. 24-01950-295463-02 Docket No. WEST 2013-0034 A.C. No. 24-01950-3000928-02 Docket No. WEST 2013-0046 A.C. No. 24-01950-301628-01 Docket No. WEST 2013-0048 A.C. No. 24-01950-301672 Mine: Bull Mountains Mine No. 1

DECISION

Appearances: Jessica Allen, Esq., with Timothy J. Turner on brief, Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner; R. Henry Moore, Jackson Kelly, PLLC, Pittsburgh, Pennsylvania, and Christopher G. Peterson, Esq., Jackson Kelly, PLLC, Denver, Colorado, for Respondent.

Before: Judge Manning

These cases are before me upon a notice of contest and petitions for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health

Administration ("MSHA"), against Signal Peak Energy, LLC, pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 (the "Act" or "Mine Act"). The parties introduced testimony and documentary evidence at a hearing held in Billings, Montana, and filed post-hearing briefs.

Signal Peak operates the Bull Mountains Mine No. 1 (the "Mine") in Musselshell County, Montana. A total of four section 104(a) citations and one 104(d)(2) order in these dockets were adjudicated at the hearing.[1] The parties settled 15 citations in these dockets.

I. DISCUSSION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Order No. 8475786; WEST 2012-1325 and WEST 2012-1063-R

On June 13, 2012, MSHA Inspector Scott A. Markve issued Order No. 8475786 under section 104(d)(2) of the Mine Act, alleging a violation of section 75.364(d) of the Secretary's safety standards. (Ex. G-28). Order No. 8475786 documented three hazardous conditions that were not corrected immediately: (1) loose rib and roof material inby crosscut 76 covered 24 inches of the walkway, narrowing it to 27 inches, the rib mesh was damaged for 10 feet, and danger tape marked the condition, (2) the second timber outby the seal at crosscut 76 laid on the ground, and (3) the timber that was 15 feet outby crosscut 76 contacted solid ground, but only touched loose roof material and was identified by red danger tape. *Id.* Inspector Markve determined that an injury was highly likely to occur and that such an injury could reasonably be expected to be fatal. Further, he determined that the violation was significant and substantial ("S&S"), resulted from the operator's high negligence and unwarrantable failure, and that one person would be affected. Section 75.364(d) of the Secretary's safety standards pertains to weekly examinations and requires in pertinent part that "[h]azardous conditions shall be corrected immediately." 30 C.F.R. § 75.364(d). The Secretary proposed a penalty of $13,609.00 for this citation.

For the reasons set forth below, I modify Order No. 8475786.

Discussion and Analysis

I find that the conditions cited in Order No. 8475786 violated section 75.364(d) because Respondent failed to correct the cited hazards immediately. For the purposes of this case, the cited standard has two requirements: (1) at least one hazardous condition must exist and (2) the condition must be corrected immediately. 30 C.F.R. § 75.364(d). I credit Inspector Markve's testimony, which is supported by his photographs, that the cited area presented a crushing hazard to miners due to roof falls. (Tr. 230-31; Ex. G-30 at 2). A timber lay upon the ground and another timber did not touch solid roof. (Tr. 224-26). Mesh was cut open and had loose rock that appeared to be moving toward the open sections. (Tr. 234; Ex. G-30 at 2). Respondent argues that no roof fall hazard existed because the roof was supported with bolts and mesh,

[1] At the hearing, the parties also presented evidence concerning two citations in Docket No. WEST 2012-410. (Tr. 6-214). After the hearing, the parties submitted a motion to approve settlement, which I approved by order dated August 28, 2013.

relying upon the testimony of Ray Jensen, Respondent's general mine foreman. (Tr. 301-03). The inspector's photos suggest that rock large enough to injure a miner was not supported and I credit the inspector's testimony that roof falls in the cited area posed a hazard to miners. (Tr. 230-32). It is worth noting that at least one timber that Respondent viewed as necessary to support the roof did not do so because it fell upon the ground. (Tr. 321). At least some of the conditions that contributed to roof fall hazard were not corrected immediately because they were noted in previous examinations weeks before the inspector issued the order. (Tr. 238). Jensen testified that the conditions would be addressed in a "somewhat timely manner," which is not immediate. (Tr. 285-86). The roof conditions cited in Order No. 8475786 were not corrected immediately and created a crushing hazard, which violated section 75.364(d).

I find that Order No. 8475786 was S&S because the cited conditions were reasonably likely, but not highly likely, to contribute to a serious injury.[2] A roof fall could lead to crushing injuries. I credit the inspector's testimony that a weekly examiner might not see that the timber was not in contact with the roof based upon the weekly examiner's usual route, which made the roof fall hazard unlikely to be corrected and more likely to injure a miner. (Tr. 247). The combination of the tripping hazard and the roof fall hazard makes an injury more likely by slowing miner movement through the area and exposing miners to the roof fall hazard for a longer period of time. Most importantly, I find that the photographs taken by the inspector depict hazards that are reasonably likely to injure miners; rocks appear poised to fall onto the walkway where miners travel. (Ex. G-30 at 2). Respondent argues that the cited area was not a work area and was only traveled on a weekly basis; this argument combined with my evaluation of the inspector's photos means that the cited conditions were not highly likely to lead to a serious injury. The conditions were, however, reasonably likely to lead to a crushing injury and Order No. 8475786 was therefore S&S.

I find that the violation was the result of Signal Peak's high negligence and its unwarrantable failure to comply with the safety standard.[3] An operator that holds a good faith,

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[2] An S&S violation is a violation "of such nature as could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard." 30 U.S.C. § 814(d) (2006). A violation is properly designated S&S "if, based upon the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." *Cement Div., Nat'l Gypsum Co.*, 3 FMSHRC 822, 825 (Apr. 1981). In order to establish the S&S nature of a violation, the Secretary 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 will be of a reasonably serious nature." *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (Jan. 1984); *accord Buck Creek Coal Co., Inc.*, 52 F.3d 133, 135 (7th Cir. 1995); *Austin Power Co., Inc.*, 861 F. 2d 99, 103 (5th Cir. 1988) (approving *Mathies* criteria).

[3] Unwarrantable failure is defined by such conduct as "reckless disregard," "intentional misconduct," "indifference" or a "serious lack of reasonable care." *Emery Mining Corp.*, 9 FMSHRC at 2003; *see also Buck Creek Coal, Inc. v. FMSHRC,* 52 F. 3d 133, 136 (7th Cir. 1995). Whether conduct is "aggravated" in the context of an unwarrantable failure analysis is determined by looking at all the facts and circumstances of each case to see if any aggravating

reasonable belief that a condition is not hazardous does not act with the required knowledge to commit an unwarrantable failure. *IO Coal Co.*, 31 FMSHRC 1346, 1357-58 (Dec. 2009). I credit Jensen's testimony that he did not believe that the conditions were hazardous. The inspector's photographs and testimony, however, reveal a roof fall hazard that existed for weeks. I find that the evidence establishes that Jenson's belief was not objectively reasonable under the circumstances.

I credit the inspector's testimony, as corroborated by his photographs, concerning his high negligence and unwarrantable failure determinations. The inspector testified that the conditions were extensive and obvious. (Tr. 247-49). "You couldn't miss" the material in the walkway, the fallen timber, or the bagging roof mesh. *Id.* The evidence establishes that these hazardous conditions existed for a considerable length of time and that Signal Peak knew or should have known of the conditions through its examiners.[4] Signal Peak's efforts to abate the conditions did not come close to remediating the hazards. Inspector Markve testified that he previously discussed with management the importance of recording hazardous conditions during weekly examinations and taking steps to immediately correct the conditions. (Tr. 249-50). Although the cited area was not frequently traveled, the violation posed a high degree of danger to those who were in the area. I hold that Signal Peak exhibited high negligence and a serious lack of reasonable care in failing to immediately correct the cited conditions.

Order No. 8475786 is hereby **MODIFIED** to be reasonably likely instead of highly likely to contribute to an injury. A penalty of $15,000.00 is appropriate for Order No. 8475786.

B. Citation No. 8475790; WEST 2012-1326

On June 14, 2012, Inspector Markve issued Citation No. 8475790 under section 104(a) of the Mine Act, alleging a violation of section 75.384(a) of the Secretary's safety standards. (Ex. G-21). Citation No. 8475790 states that gob piled to within 3 feet of the roof mesh as well as other refuse upon the ground created a stumbling, tripping, or falling hazard in the tailgate travelway for the 2 Right Longwall Section. *Id.* Inspector Markve determined that an injury was

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factors exist, such as the length of time that the violative condition has existed, the extent of the violative condition, whether the operator has been placed on notice that greater efforts are necessary for compliance, the operator's efforts in abating the violative condition, whether the violation is obvious or poses a high degree of danger, and the operator's knowledge of the existence of the violation. *See e.g. Consolidation Coal Co.*, 22 FMSHRC 340, 353 (Mar. 2000). Repeated similar violations are relevant to an unwarrantable failure determination to the extent that they serve to put an operator on notice that greater efforts are necessary for compliance with a standard. *Peabody Coal Co.*, 14 FMSHRC 1258, 1261 (Aug. 1992).

[4] The Commission has recognized that the preshift examination requirement in section 75.360 is "of fundamental importance in assuring a safe working environment underground." *Buck Creek Coal Co.*, 17 FMSHRC 8, 15 (Jan. 1995). Weekly examinations are likewise of fundamental importance especially in those areas of the mine that are not subject to preshift examinations. A mine operator must ensure that its examiners are trained to perform thorough examinations and that hazardous conditions are reported, recorded, and corrected.

reasonably likely to occur and that such an injury could reasonably be expected to result in lost workdays or restricted duty. Further, he determined that the violation was S&S, the operator's negligence was high, and that eight persons would be affected. Section 75.384(a) of the Secretary's safety standards requires:

> If longwall or shortwall mining systems are used and the two designated escapeways required by §75.380 are located on the headgate side of the longwall or shortwall, a travelway shall be provided on the tailgate side of that longwall or shortwall. The travelway shall be located to follow the most direct and safe practical route to a designated escapeway.

30 C.F.R. § 75.384(a). The Secretary proposed a penalty of $4,689.00 for this citation.

For the reasons set forth below, I vacate Citation No. 8475790.

Discussion and Analysis

I find that the Secretary failed to fulfill his burden to show that Respondent violated Section 75.384(a) because he did not show that Entry 2, which Inspector Markve cited for the violation, was designated as the tailgate travelway. I credit the testimony of Jared Lester, Signal Peak's longwall coordinator, that Entry 1 was the designated tailgate travelway due to his first-hand knowledge of the travelways at the mine. The Secretary argued that Entry 2 was designated as the tailgate travelway based upon Inspector Markve's testimony that Entry 2 was a former escapeway, Respondent's upper management informed him that Entry 2 was the tailgate travelway upon termination of another citation, and the presence of white reflective tape in Entry 2. (Tr. 332-33. 336-37). Lester, however, testified that Entry 1 was the tailgate travelway; he was responsible for designating it as such. (Tr. 391). At the time the inspector issued Citation No. 8475790 the mine used green reflective tape to designate the tailgate travelway. (Tr. 379). Green tape hung in Entry 1 and miners were aware that Entry 1 was the tailgate travelway. (Tr. 379). Lester was not aware of the inspector's meeting with upper management (Tr. 381), but he testified that the previous citation incorrectly referenced Entry 2 as the trailhead travelway. (Tr. 387). The conditions cited in the present citation do not constitute a violation of Section 75.384(a) because that standard concerns tailgate travelways at longwall sections and Entry 2 was not such a designated travelway.

The secretary also argued that Entry 1, if it were designated as the tailgate travelway, failed to provide "safe access for miners to escape the tailgate in the event of an emergency." (Sec'y Br. at 20). This argument, however, fails because the inspector cited Entry 2, not Entry 1 and the citation does not reference Entry 1. Lester also testified that he walked through Entry 1 and the conditions did not impede travel. (Tr. 376-77). The Secretary failed to fulfill his burden to show that Respondent violated section 75.384(a). I hereby **VACATE** Citation No. 8475790.

C. Citation No. 8475639; WEST 2013-46

On March 26, 2012, Inspector Mark J. Albrecht issued Citation No. 8475639 under section 104(a) of the Mine Act, alleging a violation of section 103(a) of the Act. (Ex. G-40).

Citation No. 8475639 states that Bud Viren "refused to provide the seal compaction tests" for failed seals during the inspector's investigation of a hazard complaint. *Id.* Signal Peak "made no effort to contact the laboratory" responsible for performing the tests to obtain results. *Id.* The inspector requested the results on Friday, March 23, 2012 and issued the citation on Monday, March 26, 2012. *Id.* Inspector Albrecht determined that there was no likelihood that an injury would occur and an injury would not result in lost workdays. Further, he determined that the operator's negligence was high. Section 103(a) of the Act charges the Secretary with entering mines "[f]or the purpose of making any inspection or investigation under this act," and to gather information pertinent to the Act and mandatory health and safety standards. 30 U.S.C. § 813(a). The Secretary proposed a penalty of $3,000.00 for this citation.

For the reasons set forth below, I vacate Citation No. 8475639.

Discussion and Analysis

I find that that Edward A. (Bud) Viren III, Signal Peak's vice-president of engineering, did not refuse to provide seal compaction tests for failed seals and therefore did not impede Inspector Albrecht's investigation in violation of Section 103(a) of the Act. I credit the testimony of both Viren and David John Brown, who was the longwall coordinator when Citation No. 8475639 was issued, that Respondent did not violate section 103(a) of the Act.

Miners construct two metal stoppings that are 4 feet apart in each crosscut as the longwall retreats. The area between the stoppings in each crosscut is filled with a cement material. (Tr. 443-44). This material must "cure" before it becomes sufficiently hard. Miners take two sets of nine samples as the area between the stoppings is filled with the material. After 28 days, Signal Peak sends one set to an independent laboratory for compression (compaction) testing. (Tr. 422, 447-49). Under Signal Peak's ventilation plan, if any of the initial set of samples sent to the laboratory fails the compression test, the lab asks the mine to send the second set of nine samples for additional testing. The specific test results from the initial set of samples are sent to the mine only if the samples pass the tests. If these samples do not meet the compression criteria, the lab only asks for the second set of samples without providing the specific test results.

On Friday, March 23, 2012, Viren provided Inspector Albrecht with records concerning site inspections of the seals, calibration records, and the results of laboratory compression tests received from the laboratory. (Tr. 407). Late in the day, Inspector Albrecht asked Viren if he had any records for seals that failed the compression test. *Id.* Viren provided an email from the lab that showed that a seal failed the compression test; the email did not give specific results. Viren told the inspector that because it was late Friday afternoon and the lab was closed, he would not be able to provide him with specific test results until sometime on Monday when he could contact lab personnel. (Tr. 408-09).

Viren testified that he stayed at the Mine throughout the weekend for the purpose of aiding the inspector's investigation of the available records and the inspector testified that Viren was helpful throughout the weekend. (Tr. 485-86, 436). Brown testified that he left voicemails on Friday, Saturday, Sunday, and Monday as well as emails on Monday for his contact at the lab.

(Tr. 470. 458-60). He testified that Respondent "did everything in our power to get" the test results. (Tr. 462).

Respondent provided the test results to the inspector on Monday, March 26, 2012, but only after Inspector Albrecht issued Citation No. 8475639. Viren testified that the inspector harassed and frustrated him throughout the weekend. (Tr. 484, 487). The inspector testified that Viren told him, using harsh language, "you need to talk to Dave Brown" and that helping him was not Viren's job, which led to the issuance of Citation No. 8475639. (Tr. 413, 431). The inspector testified that Viren's manner of speaking contributed to his decision to issue Citation No. 8475639 and when asked if he would have issued the citation if Viren had addressed him in a different way, the inspector replied, "[p]robably not, no." (Tr. 437).

I find that Respondent exerted its best efforts to obtain the test results that the inspector requested and provided those results as soon as possible. Although it is inadvisable for an operator's agent to speak to an inspector in an unpleasant manner, it is not necessarily a violation of the Act to do so.[5] I find that Signal Peak did not impede MSHA's investigation of the section 103(g) complaint.[6] I therefore **VACATE** Citation No. 8475639.

D. Citation No. 8476307; WEST 2013-34

On July 23, 2012, Inspector Wayne Johnson issued Citation No. 8476307 under section 104(a) of the Mine Act, alleging a violation of section 75.364(h) of the Secretary's safety standards. (Ex. G-37). Citation No. 8476307 states that "[d]uring the weekly exam dated 7/22/2012, the hazardous seals located in 2RT at cross cut 86 and cross cut 95 were not noted in the weekly examination book by the examiner. Failed seals with low oxygen behind them are hazardous to miners." *Id.* Inspector Johnson determined that an injury was unlikely occur, but that any injury would be permanently disabling. Further, he determined that the operator's negligence was high and that one person would be affected. Section 75.364(h) of the Secretary's safety standards requires in pertinent part that "[a]t the completion of any shift during which a portion of a weekly examination is conducted, a record of the results of each weekly examination, including a record of hazardous conditions found during each examination and their locations" shall be recorded. 30 C.F.R. § 75.364(h). The Secretary proposed a penalty of $499.00 for this citation.

For the reasons set forth below, I vacate Citation No. 8476307.

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[5] Viren denies that he swore at the inspector or told him that helping an inspector was not his job.

[6] The Secretary argues that the inspector was entitled to immediate access to the information that he desired in accordance with 103(g) to investigate an anonymous complaint and Respondent purposely delayed his access. I reject this argument. The inspector's testimony, as well as that of Brown and Viren, suggests that Respondent did its best to provide information to the inspector throughout the weekend. The test results were in an independent lab and delaying the inspector's access to those test results served no purpose to Respondent since the passage of a few days would not change the results.

Discussion and Analysis

I find that Respondent did not violate section 75.364(h) because the Secretary failed to fulfill his burden to show that Respondent did not record hazardous conditions in its weekly examination records. Section 75.364(h) generally requires that operators must make records documenting weekly examinations and specifically requires that hazards must be included in these records. 30 C.F.R. § 75.364(h). The Commission recently summarized section 75.364(h) as requiring that "hazardous conditions be recorded during weekly examinations." *Mach Mining, LLC*, 35 FMSHRC 2937, 2938 (Sept. 2013). The standard does not require that all conditions be recorded. I credit Brown's testimony that the cited conditions were not hazardous.

The Secretary argues that Respondent noted failed seals in the preshfit and onshift reports but did not note the condition in its weekly examination records.[7] Brown, however, testified that the test results were recorded in the "remarks" section of the preshift and onshift reports and not the hazard section because the cited seals were not hazardous. (Tr. 533, 538; Ex. G-39). The test results showed that there were soft spots in the exterior areas of the seals that were not completely cured. (Tr. 528). The air behind the seals was inert, with safe methane, oxygen, and nitrogen levels. *Id.* The inspector did not examine the seals himself and admitted that the oxygen levels behind the seals were safe. (Tr. 518). The seals are not hazardous while curing and are therefore not hazardous when soft spots fail to completely cure, especially when the seals do not serve to separate miners from unsafe atmosphere. At the time the citation was issued the outby "seals" were still curing and the cited seals functioned as stoppings rather than seals. (Tr. 528). I credit Brown's testimony that the seals were not leaking and functioned to separate the two atmospheres. (Tr. 529). The Secretary, furthermore, did not present any evidence to show that the cited condition was a hazard but relied upon the fact that conditions recorded in the preshift and onshift examination books were not recorded in the weekly examination book. Although this condition was worth noting during preshift and onshift examinations, I find that it was not a hazard and Signal Peak did not violate Section 75.364(h). I hereby **VACATE** Citation No. 8476307.

E. Citation No. 8464892; WEST 2013-48

On November 5, 2011, Inspector Johnson issued Citation No. 8464892 under section 104(a) of the Mine Act, alleging a violation of section 75.202(a) of the Secretary's safety standards. (Ex. G-33). Citation No. 8464892 states:

> In 3 right section entry 3 xc5 to xc6, a roof fall occurred that measured approximately 20 feet wide by 20 feet long by 12 feet high. The area was not controlled to protect persons from hazards related to falls of the roof. Uncontrolled roof strata had water penetration of the upper coal and parting seams that was not controlled. This exposed miners that travel this entry each shift to roof fall injuries that would be fatal.

[7] The Secretary acknowledges that the conditions were recorded in the preshift and onshift reports and states that Citation No. 8476307 was a paperwork violation even though "[b]oth pre-shift and on-shift were essentially part of the weekly examination." (Sec'y Br. at 32).

Id. Inspector Johnson determined that an injury was highly likely to occur and that such injury would be fatal. Further, he determined that the violation was S&S, the operator's negligence was high, and that one person would be affected. Section 75.202(a) of the Secretary's safety standards requires, in pertinent part that "[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). The Secretary proposed a penalty of $70,000.00 for this citation.

For the reasons set forth below, I vacate Citation No. 8464892.

Discussion and Analysis

I find that Respondent did not violate section 75.202(a) because the roof control initiated by Respondent is what a reasonably prudent person would have provided. The Secretary's roof-control standard 30 C.F.R. § 75.202(a) is broadly worded. Consequently, the Commission has held that "[t]he adequacy of particular roof support or other control must be measured against the test of whether the support or control is what a reasonably prudent person, familiar with the mining industry and protective purpose of the standard, would have provided in order to meet the protection intended by the standard." *Cannon Coal Co.*, 9 FMSHRC 667, 668 (Apr. 1987). An examiner at the Mine recognized the hazard imposed by the roof, which led to Signal Peak's efforts to repair it. (Tr. 557). Jensen as well as Ben Harcourt, the underground shift foreman, testified that Respondent shut down and dangered off the area, only allowing entrance to examiners and miners working to support the roof. (Tr. 579-80, 573-76). Intending to rebolt the roof, Respondent first set timbers. (Tr. 583). When the timbers did not solve the problem, Respondent set breaker rows going toward the hazard from both directions to stop a roof fall from spreading if it occurred. (Tr. 583). These timbers and breaker rows did not reach the area where the roof fall occurred, however, because miners left the area hours before the roof fell when they heard cracking and popping. (Tr. 551-52). Leaving the area was both safe and prudent for these miners.

I reject the Secretary's argument that the occurrence of the roof fall alone shows that the condition violated Section 75.202(a). Section 75.202(a) imposes upon Respondent the duty to maintain safe roof conditions in the manner that a reasonably prudent person would do. For an operator to support or control a roof, it must first identify any hazards and address those hazards in a safe manner. Here, Respondent identified a hazardous section of roof that it needed to rebolt. Respondent dangered the area and set timbers. When timbers were inadequate to control the roof, it set breaker rows. When the cited hazard became too dangerous for Respondent to approach it to set the timbers and breaker rows, Respondent evacuated the area. Respondent approached its duty to support and control the roof under section 75.202(a) in a cautious and logical manner that limited risk to miners. It sought to bolt the roof, but approached the task in a way that protected miners from a roof fall. The Secretary argues that Respondent misunderstood the roof structure and should have amended its roof plan,[8] but I find that in this situation, a reasonably prudent person would have taken the same steps as Respondent did to meet the

[8] Respondent was completing the process of amending its roof plan when the citation was issued. (Ex. R-27). Section 75.223, not 75.202(a), addresses the need to revise a roof control plan when conditions warrant.

protection intended by the standard. The Secretary, furthermore, did not present any evidence to show that these actions were unreasonable. I hereby **VACATE** Citation No. 8464892.

II. SETTLED CITATIONS

A number of the citations at issue in these cases settled. By order dated July 3, 2013, I approved the parties' settlement of Citation No. 8475644 in Docket No. WEST 2012-1325 and ordered Signal Peak to pay a penalty of $12,000.00. By order dated February 26, 2014, I approved the parties' settlement of eight citations issued under section 104(a) of the Mine Act in Docket No. WEST 2012-1326 and ordered Signal Peak to pay a penalty of $7,484. By order dated February 26, 2014, I approved the parties' settlement of six citations issued under section 104(a) of the Mine Act in Docket No. WEST 2013-34 and ordered Signal Peak to pay a penalty of $1,034.

III. APPROPRIATE CIVIL PENALTIES

Section 110(i) of the Mine Act sets forth the criteria to be considered in determining an appropriate civil penalty. I have considered the Assessed Violation History Report, which was submitted by the Secretary. (Ex. G-20). At all pertinent times, Respondent was a large mine operator. The violations were abated in good faith. The penalties assessed in this decision will not have an adverse effect upon the ability of Signal Peal Energy, LLC, to continue in business. The gravity and negligence findings are set forth above.

IV. ORDER

For the reasons set forth above, I **VACATE** Citation Nos. 8464892, 8476307, 8475639, and 8475790 and I **MODIFY** Order No. 8475786. Signal Peak Energy, LLC, is **ORDERED TO PAY** the Secretary of Labor the sum of $15,000.00 within 30 days of the date of this decision.[9]

Richard W. Manning
Administrative Law Judge

[9] Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.

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