FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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July 23, 2010

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2009-371
Petitioner,	:	A.C. No. 46-01318-168124
	:	
v.	:	
	:	
CONSOLIDATION COAL COMPANY,	:	Mine: Robinson Run #95
Respondent	:	

DECISION

Appearances: Jodeen Hobbs, Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner;
Carol Marunich, Dinsmore & Shohl, LLP, Morgantown, West Virginia, for Respondent.

Before: Judge Miller

This case is before me on a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration, against Consolidation Coal Company, pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 (the "Mine Act" or "Act"). The case initially involved nine violations assessed at $40,919.00. The parties have agreed to resolve four (4) of the violations, leaving five (5) for decision here. The five remaining violations were issued by MSHA under section 104(a) and (d) of the Mine Act at the Robinson Run #95 mine operated by Consolidation Coal Company, Inc. The parties presented testimony and documentary evidence at the hearing held in Morgantown, West Virginia on May 12, 2010.

The parties entered into certain stipulations that were accepted by the Court and entered as Exhibit 1 in the case.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Consolidation Coal Company, Inc., ("Consol") operates the Robinson Run #95 mine (the "mine"), an underground, bituminous, coal mine, in Marion County, West Virginia. The mine is subject to regular inspections by the Secretary's Mine Safety and Health Administration ("MSHA") pursuant to section 103(a) of the Act. 30 U.S.C. § 813(a). The parties stipulated that Consol is an operator as defined by the Act, and is subject to the jurisdiction of the Federal Mine Safety and Health Review Commission. Ct. Ex. 1. At the end of the hearing, the parties

stipulated that the operator does not contest the violations, but raises issues only as to the S&S designations and, where applicable, the unwarrantable failure findings.

In August and September, 2008, MSHA inspector Aaron Wilson conducted regular inspections at the Robinson Run #95 mine. He was accompanied during portions of his inspections by Larry Jones and Michael Jacquez, both of whom were Consol employees in the company's safety department, as well as by a representative of miners. A number of citations and orders were issued during the inspections, including the five discussed herein.

a. Order No. 6608537

On August 18, 2008, Inspector Aaron Wilson issued Order No. 6608537 to Consolidation Coal Company, Inc., for a violation of section 75.400 of the Secretary's regulations. The citation alleges that:

> [c]ombustible material in the form of loose lump coal and coal fines, wet in nature, has accumulated underneath the 14-A (091-0 mmu) coal conveyor belt at 90 block from the tail roller outby a distance of 17 feet. These accumulations are on the wide side of the belt extending underneath of the belt half way (approximately 2 ½ feet). The accumulations are up to 1 foot in height and are in contact with the belt for a short distance. These same type of accumulations are present piled up around the tail roller for a height of 20 inches on the inby side and across the length of the 64 inch tail roller. The accumulations around the tail roller are wet in nature but starting to dry out in the outer layer along the outer tight [sic] side edge. The tail roller is warm to the touch. Accumulations are present on top of the feeder in the from [sic] of fine and lump coal, dry in nature, 55 inches in length, up to 2 feet high and approximately 1 foot less than the width of the feeder. The condition of the spillage at the tail piece has been listed in the preshift record book with no corrective action since midnight shift on 8/17/08 (5 shifts).

The inspector found that an injury was reasonably likely to occur, that the violation was significant and substantial, that two persons would be affected, and that the violation was the result of high negligence on the part of the operator. The Secretary has proposed a civil penalty in the amount of $6,115.00.

1. <u>The Violation</u>

Aaron Wilson is an MSHA mine inspector who has worked in mines since 2001 and has been employed by MSHA since September 2006. He has a degree and holds a number of certifications, including mine foreman papers.

Section 75.400, the cited section of the Secretary's regulations, requires that "[c]oal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on diesel-powered and electric equipment therein." 30 C.F.R. § 75.400. Wilson's testimony directly reflected the facts as set forth in the citation, i.e., accumulations of loose coal, coal chunks, and coal fines existed for the distance, and in the amounts, listed in the citation. Consol's witnesses did not dispute that the violation occurred as cited.

2. Significant and Substantial Violation

A significant and substantial ("S&S") violation is described in section 104(d)(1) of the Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 U.S.C. § 814(d)(1). 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).

The Commission has explained that:

> [i]n 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, 3-4 (Jan. 1984) (footnote omitted); *see also, Buck Creek Coal, Inc. v. MSHA*, 52 F.3d 133, 135 (7th Cir. 1999); *Austin Power, Inc. v. Secretary*, 861 F.2d 99, 103-04 (5th Cir. 1988), *aff'g Austin Power, Inc*., 9 FMSHRC 2015, 2021 (Dec. 1987) (approving *Mathies* criteria).

As discussed above, there existed a violation of the mandatory safety standard as alleged by the Secretary. Further, I find that a discrete safety hazard existed as a result of the violation, i.e., accumulations of coal rubbing against the belt and in the feeder create a significant risk of smoke and fire in an underground mine environment. The fact that coal was drying out, and was dry around the edges, created a situation in which the accumulations could have been easily ignited.

The difficulty with finding a violation S&S normally comes with the third element of the *Mathies* formula. In *U.S. Steel Mining Co., Inc.*, 7 FMSHRC 1125, 1129 (Aug. 1985), the Commission provided additional guidance:

> We have explained further that the third element of the *Mathies* formula "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury." *U.S. Steel Mining Co., Inc.*, 6 FMSHRC 1834, 1836 (August 1984). We have emphasized that, in accordance with the language of section 104(d)(1), it is the *contribution* of a violation to the cause and effect of a hazard that must be significant and substantial. *U.S. Steel Mining Co., Inc.*, 6 FMSHRC 1866, 1868 (August 1984); *U.S. Steel Mining Co., Inc*., 6 FMSHRC 1573, 1574-75 (July 1984).

This evaluation is made in consideration of the length of time that the violative condition existed prior to the citation and the time it would have existed if normal mining operations had continued. *Elk Run Coal Co.*, 27 FMSHRC 899, 905 (Dec. 2005); *U.S. Steel Mining Co., Inc.*, 6 FMSHRC at 1574. The question of whether a particular violation is S&S must be based on the particular facts surrounding the violation. *Texasgulf, Inc*., 10 FMSHRC 498 (Apr. 1988); *Youghiogheny & Ohio Coal Co.*, 9 FMSHRC 2007 (Dec. 1987).

I find that the hazard described, i.e., smoke and/or fire, would reasonably result in an injury which would have been of a serious or potentially fatal nature. Inspector Wilson credibly testified regarding the hazard that was created by the coal accumulations he cited. Wilson stated that the coal was dry around the edges of the tail piece and that the tail piece was warm to the touch. The coal accumulations were alongside and underneath the belt and, in some places, were in contact with the belt. Frictional heat from the belt dries and heats the accumulations and, in turn, can cause a fire. (Tr. 18-20). Additional accumulations that were drying out were also found at the tail roller. Wilson stated that if the tail roller continued to operate in the condition as he observed it, the coal would dry out, grind to smaller particles and easily ignite. While he acknowledged that the general area was wet, he described areas that had dried or were drying out. He explained that the coal accumulations would continue to heat up and become drier and drier as the tail roller continued to generate frictional heat which, in turn, would make the accumulations extremely susceptible to an ignition source, such as the heat generated from the belt. (Tr. 21, 137). Wilson testified that the cited accumulations were reasonably likely to ignite if mining operations continued. (Tr. 23-24).

Wilson suggested that, at a minimum, one would expect the hazard to result in lost work days due to the injuries caused by the smoke from accumulations and the belt. He listed two miners, who would respond to the fire, as those affected. However, if a belt fire were to occur, the smoke would be thick and black, which would in turn reduce the visibility and make it difficult for miners to breath and/or find their way out of the mine. If that were to occur, the entire crew of 13 miners would be exposed to the hazard. (Tr. 24-25). Given that the

Secretary's assessment considered only two persons affected, I find that the proposed penalty should be modified to reflect the exposure of the entire crew.

Wilson's testimony is bolstered by Richard Sandy, a safety representative from the UMWA, who was very clear about what he observed during the course of the inspection. (Tr 35, 108-109). Sandy was present when the feeder was moved for cleaning and could see that, in addition to the coal cited by Inspector Wilson, there were further coal accumulations packed underneath the feeder, which he believed indicated that the accumulation had existed for some time. (Tr. 110). Sandy observed coal around the bearing block, coal that was dry and drying out, and that the tail roller was turning in the coal. (Tr. 110). He believed that the rubbing of the belt against the frame of the belt conveyor created a "dangerous condition." (Tr. 111-112). Wilson and Sandy agreed that, although the accumulations were wet and damp in some areas, the accumulations were drying out in other areas and, therefore, smoke and fire were likely. I find that if this violation were left unabated, it would continue to worsen.

Consol argues that the S&S designation was improper given that the accumulations were, in large part, wet and that the area around the edges of the tail roller was the only one area that was drying out or dry. The mine argues that the wet nature of the coal reduced the likelihood of a fire breaking out as well as the potential of such fire to spread. Finally, the mine argues that safety measures, including rock dust, carbon monoxide monitors, and fire fighting equipment, reduced the degree of danger presented by the violative condition. (Tr. 161-162).

Larry Jones, a member of the mine's safety department, accompanied the inspector and described a much different scene than the one described by Wilson. (Tr. 139). In Jones' view, the accumulations were not extensive, were wet, and were not near the tail piece or rubbing against the rollers. I find Jones' testimony to be rehearsed and credit the testimony of Wilson and Sandy in describing the violation and its seriousness. Photos taken by Jones, which were offered into evidence, show the subject area from the side opposite of that viewed by the inspector, and at least one photo shows the coal drying out, not in the water, and against the conveyor structure. Consol. Ex. 39, photo E.

The Commission has addressed the issue of accumulations and conveyor belts a number of times. In *Amax Coal Co.,* 19 FMSHRC 846 (May 1997), the Commission upheld an ALJ's finding that a belt running on packed coal was a potential source of ignition for accumulations of loose, dry coal and float coal dust along a belt line, and that the condition presented a reasonable likelihood of an injury causing event. In addition, in *Mid-Continent Resources, Inc.*, 16 FMSHRC 1218, 1222 (June 1994), the Commission held that accumulation violations may properly be designated as S&S where frictional contact between belt rollers and the accumulations, or between the belt and frame, results in a potential ignition source for the accumulations. The Commission in *Mid-Continent* found that it was immaterial that there was no identifiable hot spot in the accumulations because continued normal mining operations must be taken into account when evaluating the circumstances. In the present case, if the violative condition had been allowed to persist, it would have reasonably led to smoke, fire and, potentially, an explosion. Further, an additional potential ignition source was present in the form

of the belt rubbing the structure, which could generate a spark. In any event, even if the coal was wet, the Commission has recognized that wet coal can dry out and ignite. *See Black Diamond Coal Mining Co.,* 7 FMSHRC 1117, 1121 (Aug. 1985).

The mine operator argues that all of the other protections required by the Mine Act and its regulations, which it alleges were properly in place at the time of the order, reduced the possibility of an injury producing event, thereby rendering it non-S&S. The Courts and the Commission have found to the contrary. In *Buck Creek Coal*, 52 F.3d 133, 136 (7th cir. 1995), the mine operator argued that carbon monoxide detectors, a fire-retardant belt, a fire suppression system, a fire brigade team, a rescue team, fire fighting equipment and ventilation all undermined the likelihood of a serious injury that would result from a coal accumulation violation. The Seventh Circuit, in upholding the decision of the ALJ regarding the serious nature of the accumulations, determined that the fact that there were other safety measures to deal with a fire does not mean that fires are not a serious safety hazard and, rather, the precautions are in place because of the "significant dangers associated with coal mine fires." While extra precautions may help to reduce some risks, they do not *de facto* make accumulations violations non-S&S.

I conclude that the preponderance of the evidence establishes that it was reasonably likely that the coal accumulations would result in injury causing events, and that the injuries would be serious or fatal. I rely primarily on the testimony of Inspector Wilson in reaching this conclusion. I find that the Secretary has satisfied the four *Mathies* criteria and established the violation as S&S.

3. Unwarrantable Failure

The term "unwarrantable failure" is defined as aggravated conduct constituting more than ordinary negligence. *Emery Mining Corp.*, 9 FMSHRC 1997, 2004 (Dec. 1987). Unwarrantable failure is characterized by such conduct as "reckless disregard," "intentional misconduct," "indifference," or the "serious lack of reasonable care." *Id.* at 2003-04; *Rochester & Pittsburgh Coal Co*., 13 FMSHRC 189,194 (Feb. 1991). Aggravating factors include the length of time that the violation 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 was obvious or posed a high degree of danger, and the operator's knowledge of the existence of the violation. *See Consolidation Coal Co.,* 22 FMSHRC 340, 353 (Mar. 2000); *Mullins & Sons Coal Co.*, 16 FMSHRC 192, 195 (Feb. 1994); *Windsor Coal Co.*, 21 FMSHRC 997, 1000 (Sept. 1999); *Consolidation Coal Co.*, 23 FMSHRC 588, 593 (June 2001). All of the relevant facts and circumstances of each case must be examined to determine if an actor's conduct is aggravated, or whether mitigating circumstances exist. *Consolidation Coal Co.*, 22 FMSHRC at 353.

The day the subject citation was issued, Wilson described the condition as extensive, obvious and as having existing for an extended period of time. When Wilson and Jones arrived in the area, Jones immediately shut down the belt. He did so because the condition was obvious

and needed to be cleaned up immediately. Sandy described the violative condition as "plain as day" when he arrived at the tail roller. (Tr. 111).

There is some dispute as to how long the conditions existed. Wilson reviewed the preshift books and found spillage listed in the preshift record beginning on Saturday, August 16th, 2010, and again on the 17th and 18th. Sec'y Ex. 41; (Tr. 36). Each time the pre-shift report failed to mention that any action was taken, leading Wilson to believe that nothing was done to correct the problem. (Tr. 29-34). Jones explained that the reports indicated that the conditions were "carried over" from Saturday and Sunday because the mine did not produce coal on Sunday and the belts were not running. However, he also testified that clean-up was often conducted on Sundays. Jones advanced the theory that the "spillage" listed on the preshift for five shifts was somehow cleaned up and the spillage cited by Wilson occurred only on that day. However, when pressed, Jones admitted that he didn't "think it was [the same], but [he didn't] know." (Tr. 151). Sandy, like other witnesses, agreed that the accumulations had been there for some time, given that when the feeder was lifted up to begin the clean-up, the belt "was packed full of coal around the rollers." (Tr. 112).

Based on the fact that the preshift reports were signed by management, Wilson believed that the mine knew of the problem and too no corrective action. He saw this as a dangerous and obvious condition that should have been corrected immediately. He indicated that the violation was the result of high negligence because the condition had been listed in the preshift book for five shifts, agents of the operator had been in the area, and no corrective action had been taken by an examiner or anyone else. In *Buck Creek Coal, Inc. v. FMSHRC* the Seventh Circuit Court of Appeals concluded that extensive accumulations that were present for at least one shift, and not removed after one pre-shift examination, provided an adequate basis to establish an unwarrantable failure finding based on the length of time that the condition existed. 52 F.3d 133, 136 (7th Cr. 1995); *see also Windsor Coal Co.,* 21 FMSHRC 997 (Sept. 1999).

Wilson testified that, based on the numerous accumulations violations that the mine had been issued prior to this one, the mine was aware that greater efforts were necessary for compliance with accumulations. Wilson found no mitigating factors and determined that the mine did not take accumulations seriously and made no effort to clean up the area. Based on the testimony of the Secretary's witnesses that the accumulations existed from Saturday until the inspector arrived on Monday, and my finding that the conditions existed as noted in the preshift books yet nothing was done to clean up the area, I find that the mine exhibited high negligence.

Pascal Eddy, a mine foreman at Robinson Run #95, was present on the day of the issuance and arrived at the belt tailpiece shortly after Inspector Wilson. Upon his arrival, he assessed the area by determining what needed to be cleaned up and immediately began doing so. (Tr. 190). In all, he called four or five miners to clean up the accumulations. It took approximately two hours for those miners to clean the area which, I find, is a strong indication of the extensiveness of the accumulations. Eddy confirmed that coal had been mined the shift before the inspector's arrival and that the belts were running just prior to the inspector's arrival, although coal had not yet been produced on that shift. (Tr. 192-195). He testified further that the accumulations were

wet, and therefore not S&S, and that the tail piece was checked at least once each shift. (Tr. 205-209). However, he also said that he "really can't tell you when it happened." (Tr. 210).

The extensive history of assessed violations for this mine, i.e., over 100 accumulation violations in a short period of time, lends further support to its high negligence in this instance. Sec'y Exs. 43, 45, 46, 47 and 48. Furthermore, in examining an unwarrantable failure finding related to section 75.400, the Commission has recognized that:

> past discussions with MSHA about an accumulation problem serve to put an operator on heightened scrutiny that it must increase its efforts to comply with the standard. *Enlow Fork Mining Co.,* 19 FMSHRC 5, 11-12 (Jan. 1997). Likewise, a high number of past violations of section 75.400 serve to put an operator on notice that it has recurring safety problem in need of correction and the violation history my be relevant in determining the operator's degrees of negligence. *Peabody,* 14 FMSHRC at 1263-64.

Consolidation Coal Co., 23 FMRSHR 588, 595 (June 2001).

All relevant facts and circumstances of each case must be examined to determine if an actor's conduct is aggravated, or whether mitigating circumstances exist. *Consolidation Coal Co.,* 22 FMSHRC at 353. The record supports a finding that Consol was on notice of the violative condition by virtue of the mine manager's signature on the pre-shift examination reports for the five shifts in which the condition had been recorded. It has also been established that the violation posed a significant degree of danger, in that the accumulations were reasonably likely to lead to or propagate a mine fire or explosion. Therefore, I find that sufficient evidence exists to support a conclusion that the cited conditions were the result of Consol's unwarrantable failure.

b. Order No. 6608544

On August 26, 2008, Inspector Aaron Wilson issued Order No. 6608544 to Consolidation Coal Company, Inc., for a violation of section 75.370(a)(1) of the Secretary's regulations. The citation alleges that:

> The operator is not following the approved ventilation plan on the 15-A (073-0 mmu) continuous miner section. In the face of the #1 entry inby the #36 crosscut, only 2,160 cfm of air is being maintained. The approved mine ventilation plan plainly states on page 3, part 14, line D that "a minimum of 3,000 cfm will be maintained at each working place" for development of cross-cut centers of 275 feet with a maximum distance of 300 feet without an air connection when driving in excess of 200 feet. Management

> was put on notice on the date of driving in excess of 200 feet. Management was put on notice on the date of 7/30/2008 after the issuance of citation #6608359 that the next time this condition was observed by this inspector stronger enforcement actions would be taken.

The inspector found that a fatal injury was reasonably likely to occur, that the violation was significant and substantial, that two persons would be affected, and that the violation was the result of high negligence on the part of the operator. The Secretary has proposed a civil penalty in the amount of $15,971.00.

1. The Violation

Inspector Wilson testified that the Robinson Run #95 mine is a gassy mine and on the date in question he was there for a 5-day spot inspection. He started in the belt entry and began checking air velocities. The mine plan requires 3,000 cfm in idle places. Upon reaching the idle face of the #1 entry he used an anemometer at the end of the line curtain to determine air velocity and found only 2,160 cfm of air. As a result of the reading, he issued the order for a violation of 30 C.F.R. § 75.370(a)(1), which requires that "the operator shall develop and follow a ventilation plan approved by the district manager." (Tr. 325-326). Jones also took a reading and agreed that the area did not have the 3,000 cfm required by the ventilation plan.

The MSHA ventilation supervisor, John Hayes, testified that the ventilation plan of the mine requires that a minimum of 3,000 cfm of air be provided at the idle places. Sec'y Ex.14 ¶ 14(D). Hayes acknowledged that there are no exceptions and therefore the lack of air was a violation. The violation is admitted by Respondent and I accept the citation as issued by Wilson and find that the violation occurred as stated.

2. Significant and Substantial Violation[1]

I have found that there existed a violation of the mandatory safety standard as alleged by the Secretary. Further, I find that a discrete safety hazard existed as a result of the violations, i.e., the danger of methane accumulation resulting in explosion. Third, the hazard described, i.e., an accumulation of methane and subsequent ignition and explosion, will result in an injury; and fourth, that injury will be serious or even fatal. The Secretary is not required to show that it is more probable than not that an injury will result from the violation. *U.S. Steel Mining Co.*, 18 FMSHRC 862, 865 (June 1996).

Wilson explained, and Hayes agreed, that a hazard develops where there is an accumulation of methane in an area without the requisite amount of air to dilute it. A miner, unaware that methane has accumulated, may enter the area or, as often occurs, may bring a piece of equipment into the area for use or to park temporarily. Wilson noted that this mine has a history of having

[1] The law relevant to the S&S analysis is set forth in section I(a)(2) of this decision.

impermissible equipment and he observed a roof bolting machine in the #1 entry. As Hayes described, this is an idle area and a logical place to park equipment until it is started up and used again. (Tr. 256). Further, equipment regularly operates near or passes by this area. (Tr. 255). On the day the order was issued, the mine was in the process of moving the belt. Equipment was being powered up and moved throughout the shift. At the same time, the methane level was rising and adequate air was not being provided. Wilson found methane levels at .45, however, an hour earlier the examiner had recorded .2, which indicated to Wilson that the methane level was rising. (Tr. 336-337, 344). Wilson and Hayes explained that, while miners should conduct a gas check prior to energizing equipment, the reality is that they do not do so.

Hayes, an MSHA representative who specializes in ventilation and has an engineering degree, agreed that the violation was significant and substantial. He explained that Robinson Run is a gassy mine, that the idle areas are important to ventilate, and that failure to keep adequate air movement will result in a build-up of methane and a potentially fatal explosion. He added that equipment is often used or parked in the area, and is restarted without knowledge as to whether methane has accumulated to a dangerous level. (Tr. 255-256).

Consolidation added the requirement of 3,000 cfm of air in idle places to its ventilation plan when it determined that it would benefit by taking longer cuts, resulting in fewer crosscuts. When there is no continuous miner working in the area, it is considered an idle place and subject to the 3,000 cfm requirement. If the continuous miner is in the area, a greater quantity of air is required. (Tr. 248-249). This method of extending the development means mining is faster which, necessarily, equates to greater levels of methane liberation. The methane tends to reduce over time if the area remains idle, but it could be days or weeks before the methane levels reduce significantly. (Tr. 254). In order to control methane MSHA requires a minimum amount of air in idle places, since equipment is running past the idle places and there is a tendency to park equipment in those places and restart them to move them on. (Tr. 255-256).

The mine argues that the lower air velocity serves to sufficiently dilute methane to a non-explosive level, that there was no float coal dust present and that, in its view, there were no ignition sources. Michael Rene Nestor, a safety supervisor at the mine, stated that the quantity of air present was adequately diluting the methane. Jones and Nestor both testified regarding the ventilation violations. Given their attitude and demeanor, and the fact that the majority of the testimony they provided was in response to leading questions, I give their testimony little weight. They both believed that the ventilation violations were not significant and substantial because there was still air movement, and no ignition source. They require, in essence, an imminent danger to exist in order for the violation to be significant and substantial. During continued mining operations, air movement would continue to diminish in the idle areas, and the methane would build, thereby creating an explosion hazard.

Ann Martin, a member of the UMWA and chairman of the safety committee at Robinson Run #95, described in detail the methane problems encountered at the mine during the summer of 2008, i.e., the time the ventilation and accumulation violations herein were issued. The methane problem was encountered in the 15A section, where Inspector Wilson issued the two

ventilation violations addressed in this decision. Martin explained that she received an abnormally high number of complaints about methane liberation in the 15A section in the summer of 2008. She described complaints of miner and bolter operators that methane was increasing, the union fire boss was picking up more methane, and that the dinner hole had gassed off. Further, areas in off headings and idle places were picking up more methane than the miners were accustomed to seeing. It was a common complaint during the summer of 2008 that the roof bolters and continuous miners would "gas off" (i.e., shut down) four to five times in a cycle which, according to Martin, was unusual. (Tr. 305-307). The 15A section was the worst. As a result, she and other individuals discussed the problem with management, who had also been receiving the same complaints directly. A number of meetings were held with mine management that summer regarding the problems. (Tr. 309-310).

The miners were afraid of what would happen as a result of the high methane readings, and worried that something "bad" would occur if they didn't take care of it. At one point, a curtain was removed by a foreman and methane levels went to 7.7%, i.e., explosive range. Martin explained that removing the curtain is violative in and of itself, yet the mine continues to do it. (Tr. 311).

The presence of unusually high levels of methane during a shift, and the lack of ventilation where it was demonstrated that the methane level was rising, is a recipe for disaster when an ignition source is added to the mix. Wilson ably explained the many ignition sources available. The Commission and courts have observed that an experienced MSHA inspector's opinion that a violation is S&S is entitled to substantial weight. *Harlan Cumberland Coal Co.,* 20 FMSHRC 1275, 1278-79 (Dec. 1998); *Buck Creek Coal, Inc. v. MSHA,* 52 F.3d 133, 135-36 (7th Cir. 1995). Wilson certainly qualifies as an experienced MSHA inspector and I accept his assessment that the violation was significant and substantial.

3. Unwarrantable Failure[2]

Robinson Run has been issued many previous citations for ventilation plan violations and, specifically, for violations of the particular provision in the ventilation plan that is at issue in this matter. (Tr. 327-328). The mine was aware that there was heightened concern about methane during the months preceding the violation. Wilson and other inspectors had met with the mine to discuss ventilation problems prior to the issuance of the citations here. For that reason, and other reasons that follow, I find that the violation was a result of the unwarrantable failure of the mine.

Inspector Wilson and other inspectors, through communications with the mine, put the mine on notice that compliance with the ventilation plan was a problem that needed to be corrected. Wilson told management directly that he would take harsher action if it continued. (Tr. 402). He testified that "[t]he basis of [him] writing [the order] as unwarrantable failure was . . . the previous violation history, the conversation [he] had with management, and the fact that

[2] The law relevant to the unwarrantable failure analysis is set forth in section I(a)(3) of this decision.

management instituted nothing to prevent this condition, which [he had] cited multiple times, from recurring." (Tr. 402). As Martin described, it had been brought to the attention of management that this particular section of the mine was experiencing increased methane liberation around the time the order was issued. The mine however, denies that discussions took place regarding methane and the ventilation plan violations issued by Wilson.

In *AMAX Coal Co.*, an evenly divided Commission affirmed an ALJ's finding that an operator's admitted violation of its ventilation plan resulted from "unwarrantable failure" where the section foreman knew that a line curtain had not been advanced. 19 FMSHRC 1542 (Sept.1997). There, the ALJ had found that the violation was "obvious" and that the evidence showed the section foreman had been in the entry for five minutes, ignored the condition and, in so doing, miscalculated the risk involved. *Id*. The Robinson Run #95 mine is a gassy mine subject to 5-day spot checks by MSHA and was experiencing unusual levels of methane. By ignoring the violative condition, the operator ignored the risk of a methane explosion.

In *C.W. Mining Co.*, Commission ALJ Manning found that an operator unwarrantably failed to comply with its ventilation plan where previous citations had placed it on notice that it needed to do more to ensure adequate ventilation. 7 FMSHRC 138 (Feb. 2005) (ALJ). Hayes testified that, in reviewing the mine's history of violations of its ventilation plan, it was clear that this mine had been issued many, many violations under that specific provision at issue, i.e., paragraph 14(D) of the ventilation plan. He described violations of the provision that were issued on June 4, June 24, July 9 and July 30 of 2008. (Tr. 268-269). All of these violations were issued at a time when the mine was experiencing excessive methane liberation during mining. In addition, the mine was issued other ventilation violations during this time frame. *See* Sec'y Ex. 15-35. Finally, during 2007 and through 2008 up until the time this order was issued, the mine had received eleven citations and orders for not having 3,000 cfm at the idle working places as required by the plan. Further, there had been three face ignitions reported in the development sections in the eighteen months prior to this violation. As described below, Wilson issued a citation for violation of the same provision again in September. (Tr. 338-339).

The danger posed by the condition has been addressed in the S&S findings. It is unknown how long the condition existed, but it is clear from the methane readings that the methane levels were rising. The mine took no action to correct the violation and Wilson found no mitigating factors.

Todd McNair, the mine superintendent, testified on behalf of the company that he was aware that the methane liberation had increased in the face area of the 15A section. While he didn't recall any complaints, he did recall speaking to the miners working at the face and trying various changes to help allay their fears. (Tr. 481-485). He was aware that Inspector Mehaulic issued a citation on July 30, but the meeting held with him was not due to the citation; rather, it was to talk about ventilation and suggestions for controlling the methane. In essence, McNair denies that the mine had any notice that it was required to take additional steps to address the ventilation violations. McNair didn't recall talking about paragraph 14(D) of the vent plan with Mehaulic or with Wilson. Instead, he asserted that the conversations were all geared toward the

face where coal was being produced, and not the idle areas referred to in this violation issuance or the previous ones. McNair could not remember any meeting with Wilson about controlling methane in 15A section. I find McNair's testimony was almost exclusively leading and he recalled very little, therefore, I afford it little weight.

The attitude of management toward the importance of ventilation is troubling. The testimony of both McNair and Nestor, the safety supervisor, do not demonstrate any serious concern about the ventilation issues raised by MSHA. Instead, the mine management attempts to put the burden on the miners and argues that the mine addressed the methane issues as the miners sought to have them addressed. They simply don't believe it is a serious matter.

I credit the testimony of Wilson, which is contrary to both Nestor and McNair. Management demonstrated a serious lack of interest in the safety of the miners, and in following the ventilation plan. Nestor and McNair insist they did not attend a meeting with Wilson where they discussed the ventilation in the idle places. (Tr. 526). I credit Wilson's memory of the event and his notes that clearly point to the fact of the meeting. (Tr. 347). The mine obviously gave little credence to what Wilson or Mehaulic had to say about ventilation and, specifically, about ventilation in the idle faces.

The record supports a finding that Consol was on notice of the need to address the violative condition by virtue of the numerous citations issued in the months prior to this violation and the meetings with MSHA inspectors. Consol admitted that its efforts consisted of only attempting to deal with the higher than normal methane liberation and did not address this portion of the ventilation plan. It has also been established that the violation posed a significant degree of danger, and that the violation was obvious. Further, the mine, by way of the management's actions and testimony, has demonstrated an attitude that the subject section of the ventilation plan was of little importance. Therefore, I find that sufficient evidence exists to support a conclusion that the cited conditions were the result of Consol's unwarrantable failure.

c. Citation No. 6608551

On September 4, 2008, Inspector Aaron Wilson issued Citation No. 6608551 to Consolidation Coal Company, Inc., for a violation of section 75.523-3(b)(3) of the Secretary's regulations. The citation alleges that:

> [t]he automatic emergency parking brakes, when applied using the panic bar, does not engage and bring the equipment to a complete stop. During several attempts, the scoop would continue to roll up hill after the panic bar was hit, stop due to gravity or terrain, then roll back down grade. The operator removed the scoop from service.

The inspector found that an injury was reasonably likely to occur, that the violation was significant and substantial, that one person would be affected, and that the violation was the result of moderate negligence on the part of the operator. The Secretary has proposed a civil penalty in the amount of $1,203.00.

1. The Violation

Inspector Wilson testified that, while checking a scoop, he found that the emergency/panic bar did not engage when tested several times. When the scoop was on an incline it traveled uphill and then rolled back down. The panic bar is within easy reach of the scoop-operator, who can operate it by tapping it with his hand. The panic bar is intended to stop the scoop in an emergency but it also functions as a common way to shut down the scoop. This scoop had been used during the shift prior to the inspection to haul equipment and supplies to another area of the mine. Wilson issued a citation for a violation of 75.523-3(b)(3), which requires that "automatic emergency-parking brakes shall – safely bring the equipment when fully loaded to a complete stop on the maximum grade on which it is operated." 30 C.F.R. § 75.523(b)(3).

The parties agree that a violation did occur. The only issue before me is whether the violation is significant and substantial.

2. Significant and Substantial Violation[3]

As discussed above, there existed a violation of the mandatory safety standard as alleged by the Secretary. Further, I find that a discrete safety hazard existed as a result of the violation, i.e., the danger of being unable to safely stop the equipment in an emergency.

As is often the case, the primary issues in the S&S analysis is whether the violation is reasonably likely to result in an injury causing event, i.e., runaway equipment injuring another miner or injuring the operator of the equipment. The Secretary maintains that the non-functioning brake would have resulted in an inability to safely stop the scoop, especially in an emergency situation where the driver would use it to avoid hitting a miner or running into the rib or other equipment.

The operator argues that a separate brake can be used to stop the scoop and it is not likely that there will be anyone or anything in the way of the machine. Further, the operator argues that there were no other safety violations for the equipment, the area was very flat and, prior to using the equipment, the next equipment operator would have conducted a check and discovered the defective brake.

[3] The law relevant to the S&S analysis is set forth in section I(a)(2) of this decision.

The subject scoop is used to haul mining equipment to and from rail-mounted cars. A spotter directs the scoop operator during loading and unloading. The panic bar is designed to be used in an emergency, but it is commonly used to shut down the equipment during everyday use. Wilson described the scoop as a heavy piece of equipment which, if its panic bar is not functioning properly, would cause crushing injuries, which would be "at least permanently disabling if not worse," to any individual that it hits. Further, in the event the scoop cannot be stopped and it slams into a rib or a rail-mounted car, the scoop operator, as well as any person in the way, would be severely injured. The inspector explained that the violation is reasonably likely to occur and result in an accident because miners expect the safety device to work. However, when the panic bar does not work, miners naturally panic and don't have enough time to stop or shut down the scoop in another way. (Tr. 57). Inspector Wilson noted that it wasn't a question of the panic bar brakes being slow or loose; rather, the issue was that the brakes never engaged. (Tr. 54). While the scoop was not operating at the time of the inspection, Jacquez testified that he "hop[ed]" that the last operator prior to the inspection had checked the panic bar brake prior to use. (Tr. 235).

I find that the preponderance of the evidence establishes that it was reasonably likely that the hazard created by the non-functioning panic bar would contribute to an injury in the event of an emergency. I rely on the testimony of Inspector Wilson in reaching this conclusion. He believed that a miner directing the scoop or walking in the area could be crushed by the scoop if the scoop operator were not able to engage the brakes through the use of the panic bar. In addition, the operator of the scoop would be in danger if the scoop did not stop and ran into a wall or other piece of equipment. Wilson credibly testified that there were uphill slopes in the area and that the scoop operator would rely on the panic bar to stop. Further, "hoping" that a scoop operator would have checked the brake prior to operation does not convince me that an operator would have done so. I am persuaded by Wilson's argument and find that the third *Mathies* requirement is met. Also, as discussed above, I find that any injury would be a serious one, and permanently disabling at best. I therefore find that the violation was significant and substantial.

d. Citation No. 6608553

On September 4, 2008, Inspector Aaron Wilson issued Citation No. 6608553 to Consolidation Coal Company, Inc., for a violation of section 75.1002(a) of the Secretary's regulations. The citation alleges that:

> [t]he #2 bolter (serial # 83092, approval # 2G-26740-A-4) being operated on the 13-A (084-0 mmu) longwall recovery face is not being maintained in permissible condition. There is an opening of greater than 0.008" in the step flange joint in the permissible cover for the area light opposite the operator[']s compartment in front of the cable reel compartment.

The inspector found that an injury was reasonably likely to occur, that the violation was significant and substantial, that two persons would be affected, and that the violation was the result of moderate negligence on the part of the operator. The Secretary has proposed a civil penalty in the amount of $1,304.00.

1. The Violation

Inspector Wilson testified that he issued this 104(a) citation for a roof bolter in the recovery face that was not in permissible condition. Permissible condition is vital because it prevents a possible ignition of methane as the equipment is energized. In this case, the cover that encloses the light on the roof bolter contains the flame path between the cover and the enclosure when it is permissible. That path must be .007" or less, but when Wilson measured the gap with a feeler gauge, he found it be .008". Section 75.1002(a) requires that "[e]lectric equipment must be permissible and maintained in a permissible condition when such equipment is located within 150 feet of pillar workings or longwall faces." 30 C.F.R. § 75.1002(a).

The parties agree that a violation did occur. The only issue before me is whether the violation is significant and substantial.

2. Significant and Substantial Violation[4]

I have found that there was a violation of the mandatory standard as alleged by the Secretary. Further, I find that a discrete safety hazard existed as a result of the violations, i.e., the danger of allowing an ignition source to be available in this gassy mine.

The Secretary must demonstrate that the hazard described, that of an ignition created by the impermissible equipment, is reasonably likely to result in an injury causing event. The purpose of the regulation cited by Wilson is to prevent equipment that is exposed to methane from allowing the spark or flame path in the light to ignite the methane. As Wilson described, the electrical components of the light will likely create a spark which will ignite methane that has migrated into the area. (Tr. 61-63). Simply stated, permissibility is designed to limit the number of ignition sources in a gassy mine. Given the location of the bolter, and the fact that methane is often emitted as the bolter drills into the roof, it's highly likely that the ignition source in the light will be exposed to methane, thereby making an ignition and subsequent explosion likely to occur. When an ignition does occur it will cause a burn injury to, at a minimum, the two persons assigned to work on the roof bolter. (Tr. 66). Given that methane is emitted as a roof bolter drills into the coal, as well as the gassy nature of this particular mine, the likelihood of an explosion related to an ignition source provided by the roof bolter is greater than that of other equipment. (Tr. 64). In light of the conditions at this mine, and assuming the continued course of mining, there is a reasonable likelihood of an injury occurring as a result of the permissibility violation.

[4] The law relevant to the S&S analysis is set forth in section I(a)(2) of this decision.

Consol asserts that the permissibility violation does not create the likelihood of an explosion because there is adequate ventilation, no arcing was observed, no methane was detected and the roof bolter operator would have checked for methane before starting up the equipment. (Tr. 228). Jacquez explained his belief that, since there were no other defects in the equipment and this type of problem would normally be detected and repaired in the weekly permissibility check, it was unlikely that the violation would have remained unabated long enough for an accident to occur. I accept Wilson's opinion as to the likelihood of the ignition occurring. .

I find that the preponderance of the evidence establishes that it was reasonably likely that the hazard presented by the lack of a permissible light on the roof bolter would contribute to an injury and that the injury would be permanently disabling or fatal. I find that the Secretary has satisfied the four *Mathies* criteria and established the violation as significant and substantial.

e. Citation No. 8014053

On September 17, 2008, Inspector Aaron Wilson issued Citation No. 8014053 to Consolidation Coal Company, Inc., for a violation of section 75.370(a)(1) of the Secretary's regulations. The citation alleges that:

> The operator is not following the approved ventilation plan on the 15-A (073-0 mmu) continuous miner section. 3,000 cfm of air is not being maintained in the #2 entry inby 40 cross-cut. When checked by this inspector, there was not enough air flow at the end of the line canvas to spin the wheel of an anemometer.

The inspector found that an injury was reasonably likely to occur, that the violation was significant and substantial, that one person would be affected, and that the violation was the result of low negligence on the part of the operator. The Secretary has proposed a civil penalty in the amount of $7,578.00.

1. <u>The Violation</u>

Wilson testified that he issued the subject citation for failing to meet the requirements of paragraph 14(D) of the mine's ventilation plan, Sec'y Ex.14 ¶ 14(D). As Wilson walked to the face, the miners were moving from the #2 entry to the #1 entry and were attempting to move the auxiliary fan, which provides air to the working face, and, in so doing, caused the air to short circuit, blowing down the ventilating curtain in the #2 entry, resulting in no air movement in that now idle face. Wilson found that the mine violated section 75.370(a)(1) which requires "the operator shall develop and follow a ventilation plan approved by the district manager." 30 C.F.R. § 75.370(a)(1)

The parties agree that there was not the 3,000 cfm required by the ventilation plan in the area. The violation is admitted by Respondent and I accept the citation as issued by Wilson and find that the violation occurred as stated.

2. Significant and Substantial Violation[5]

As discussed above, there existed a violation of the mandatory safety standard as alleged by the Secretary. Further, I find that a discrete safety hazard existed as a result of the violation, i.e., the danger of respirable dust in the air as well as methane accumulation resulting in explosion. Third, the hazards described will result in an injury; and fourth, that injury will be serious or even fatal. Much of the discussion above regarding the significant and substantial violation of this same standard, and identical provision of the ventilation plan, relates here.

Inspector Wilson found that there was not enough air to move the settings on his hand-held anemometer and, therefore, the required cfm of air was not reaching the two entry face. (Tr. 355). The miners working in the area were in the process of moving the auxiliary fan that was used to ventilate the working face. As he approached the face, Wilson observed two miners struggling while attempting to hook the "baloney skin" to the back of the fan in order to direct air. When they could not successfully attach the skin, they dropped it and returned to other jobs. (Tr. 356). Their actions caused a short circuit of air which, in turn, blew down the ventilating curtain in the #2 entry. Wilson opined that this system is not a good one. He had spoken to Todd McNair, the superintendent of the mine, about the location of the fans during phases of mining, but McNair was not interested in Wilson's suggestions. (Tr. 359).

Wilson found 1% of methane and testified that, if left unabated, the methane would continue to accumulate and quickly reach explosive levels. (Tr. 361). Once it reached those levels, there were a number of ignition sources in the area, including the roof bolter that was in place and ready for service, and the energized auxiliary fan found in the last open cross cut. While the bolter and fans are required to be maintained in permissible condition, this mine is not good about doing so. (Tr. 364-365). Wilson testified that the equipment operators in this area should take a methane reading before energizing the bolter but, in his experience, the equipment operator flips the switch at the power center several cross-cuts away and then walks to the bolting machine without first going to the bolter to take a reading. As a result of the methane build-up and an ignition source, an explosion would certainly cause fatal injuries to at least the two miners working in the area. I credit Wilson's testimony that the condition created by the violation, i.e., the accumulation of methane in an area with ignition sources easily accessible, would result in an injury-causing event.

Consol argues that the methane levels were not high enough and that the possibility of an ignition was remote. The mine points to the fact that the equipment was permissible, and that the condition was created just as Wilson approached the area, and would have been corrected. Nestor testified on behalf of Consol that the violation was not S&S because the inspector did not

[5] The law relevant to the S&S analysis is set forth in section I(a)(2) of this decision.

fear for his own safety. He also testified that the mine "took care of the problem," as soon as Wilson pointed it out. The Secretary is not required to show that it is more probable than not that an injury will result from the violation. *U.S. Steel Mining Co.*, 18 FMSHRC 862, 865 (June 1996). Nestor tried to avoid responsibility for the ventilation violations and his attitude is evident in the miners working in the area who moved a fan without regard to the consequences. Nestor also suggested the limited view that the methane problems in the face had nothing to do with the ventilation in idle places. I find that the Secretary has satisfied the four *Mathies* criteria and established the violation as S&S by a preponderance of the evidence..

3. Additional Negligence Findings

This mine has been issued a series of citations and orders for failing to comply with paragraph 14(D) of its ventilation plan. A similar violation, issued shortly before this one, is addressed *supra*. For purposes of penalty, I find that the there is far greater negligence than assessed originally. Further, given the problems at this mine with high methane levels during this time period, management had a responsibility to see that everyone was involved in following the ventilation plan. Wilson testified that he had issued a number of citations for failing to meet the 3,000 cfm required in idle places. The mine disregarded the MSHA inspector's instructions regarding adherence to this particular section of the ventilation plan and did not see that the miners were aware of the ventilation plan's requirements. .

The Commission and the courts have uniformly held that mine operators are strictly liable for violations of safety and health standards. *Asarco v. FMSHRC,* 868 F.2d 1195(10th Cir. 1989). "When a violation of a mandatory safety standard occurs in a mine, the operator is automatically assessed a civil penalty." *Id* at 1197. In the instant case, any negligence on the part of the miners who changed the ventilation by moving the fan, is attributed to the operator. Given that the mine was experiencing unusually high levels of methane, that MSHA inspectors continued to raise the issue of ventilation and had issued a number of citations for violations of the subject paragraph of the ventilation plan, along with the fact that the mine has the responsibility to ensure that all miners are aware of the plan and how to comply with such, I find the negligence to be moderate, rather than low.

II. PENALTY

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

> [1] the operator's history of previous violations, [2] the appropriateness of such penalty to the size of the business of the operator charged, [3] whether the operator was negligent, [4] the effect on the operator's ability to continue in business, [5] the gravity of the violation, and [6] the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. 30 U.S.C. § 820(I).

In keeping with this statutory requirement, the Commission has held that "findings of fact on the statutory penalty criteria must be made" by its judges. *Sellersburg Stone Co.*, 5 FMSHRC 287, 292 (Mar. 1983), *aff'd*, 736 F.2d 1147 (7th Cir. 1984). Once findings on the statutory criteria have been made, a judge's penalty assessment for a particular violation is an exercise of discretion, which is "bounded by proper consideration of the statutory criteria and the deterrent purpose[s] . . . [of] the Act. *Id.* at 294; *Cantera Green,* 22 FMSHRC 616, 620 (May 2000).

The parties entered into an agreement as to four of the violations. The Secretary has filed a motion to approve settlement and has agreed to modify Citation No. 6608546 to non-S&S with a penalty of $308.00, to modify Citation No. 8014049 to fewer persons affected with a penalty of $243.00, and to modify Citation No. 6608422 to a non-S&S violation with a $308.00 penalty. Consol agrees to pay Citation No. 6607663 as issued with a penalty of $4,000.00. The original proposed assessment amount for these four citations is $8,721.00 and the proposed modified amount is $4,859.00. I have considered the representations and documentation submitted and I conclude that the proposed settlement is appropriate under the criteria set forth in section 110(I) of the Act. The motion to approve settlement is **GRANTED** and Consolidation Coal, is hereby **ORDERED** to pay the Secretary of Labor the sum of $4,859.00 for these four violations.

I accept the stipulation of the parties that the penalties proposed are appropriate to this operator's size, i.e., large, and ability to continue in business. The violations were abated in good faith, and no evidence has been presented to the contrary. The history shows a number of citations for ventilation violations as discussed above. I find that the following penalties are appropriate in this case, given the statutory criteria.

Order No. 6608537: I assess a penalty of $7,500.00 based upon the negligence and gravity findings discussed above, the extensive and obvious nature of the accumulation, and the fact that a fire at this location would affect everyone working in the mine.

Order No. 6608544: I assess a penalty of $16,000.00 based upon the high degree of negligence and the gravity of the violation.

Citation No. 6608551: I assess a penalty of $1,203.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6608553: I assess a penalty of 1,304.00 for the reasons set forth above.

Citation No. 8014053: I assess a penalty of $10,000.00 based upon the negligence for this violation. Although the ventilation change was made by non-management personnel, it is management's responsibility to assure that all persons are familiar with the ventilation plan and the nature of any changes made. I find that the negligence is moderate, rather than the low negligence assessed by MSHA.

A total of $36,007.00 is assessed for the violations that were heard and decided herein. The total penalty for this docket amounts to $40,866.00.

III. ORDER

Based on the criteria in section 110(I) of the Mine Act, 30 U.S.C. § 820(I), I assess a penalty of $40,866.00 for the nine violations in this docket. Consolidation Coal Company is **ORDERED TO PAY** the Secretary of Labor the sum of $40,866.00 within 30 days of the date of this decision.[6]

Margaret A. Miller
Administrative Law Judge

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[6] 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