

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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May 8, 2008

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2006-205-M
Petitioner	:	A.C. No. 14-01597-77364-01
	:	Plant 4
	:	
v.	:	Docket No. CENT 2006-209-M
	:	A.C. No. 14-01277-80289-01
	:	Plant 3
	:	
NELSON QUARRIES, INC.,	:	Docket No. CENT 2006-236-M
Respondent	:	A.C. No. 14-01277-80289-02
	:	Plant 3

**DECISION**

Appearances: Jennifer Casey, Esq, and Kristi Henes, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, and Ronald Pennington, Conference & Litigation Representative, Mine Safety and Health Administration, Denver, Colorado, for Petitioner; Paul M. Nelson, Nelson Quarries Inc., Gas, Kansas, for Respondent.

Before: Judge Manning

These cases are before me on three petitions for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration (“MSHA”), against Nelson Quarries, Inc. (“Nelson Quarries”) 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”). The cases involve 50 citations issued under section 104(a) of the Mine Act. An evidentiary hearing was held in Topeka, Kansas. These cases were heard along with 16 other Nelson Quarries cases. My decision in the other cases was issued on April 7, 2008, 30 FMSHRC \_\_\_\_ (April 2008). The parties engaged in settlement discussions following the issuance of that decision. These discussions successfully resolved all remaining issues in the present cases. A discussion of the events leading up to the issuance of the citations in these cases can be found in my April 2008 decision, which is incorporated herein by reference.

## I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. CENT 2006-205-M, Plant 4.

1. On November 16, 2005, Inspector Dustan Crelly issued Citation No. 6291255 alleging a violation of section 56.14107(a). (Ex. G-57). The alternator on a Caterpillar 773B haul truck was not guarded. Inspector Crelly determined that an injury was unlikely but that any injury would likely be permanently disabling. He determined that the violation was not S&S and that the negligence was moderate. The safety standard provides that “[m]oving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, and takeup pulleys, flywheels, coupling, shafts, fan blades, and similar moving parts that can cause injury.” The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Crelly testified that he issued the citation because a miner could contact the fan on the alternator and other moving parts. (Tr. 921). He believed that people could enter this area when the engine were running, such as when checking for oil leaks. (Tr. 923, 991). A miner will also often perform his preshift examination with the engine running. *Id.* He admitted that a miner could look at the ground under the vehicle to see if oil were leaking.

Mine Superintendent Michael Peres testified that, during a previous inspection, Inspector Crelly told him that alternator belts on Dresser and Euclid trucks needed to be guarded but not on Caterpillar trucks because the operator does not need to place himself near the alternator when checking fluid levels. (Tr. 1025-26).

For the reasons set forth with respect to Citation No. 6317432 in Docket No. CENT 2006-203-M in my April 2008 decision, this citation is affirmed. A penalty of \$60.00 is appropriate.

2. On November 16, 2005, Inspector Crelly issued Citation No. 6291256 alleging a violation of section 56.14107(a). (Ex. G-58). The alternator on a different Caterpillar 773B haul truck was not guarded. Inspector Crelly determined that an injury was unlikely but that any injury would likely be permanently disabling. He determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation. Inspector Crelly’s testimony with respect to this citation is the same as with respect to the previous citation.

My findings and conclusions are the same as they were for Citation No. 6291255, above. A penalty of \$60.00 is appropriate.

3. On November 16, 2005, Inspector Crelly issued Citation No. 6291258 alleging a violation of section 56.14107(a). (Ex. G-59). The citation alleges that the guard on the south side of the tail pulley on Belt 13A was not adequate. Inspector Crelly determined that an injury was unlikely but that any injury would likely be fatal. He determined that the violation was not

S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Crelly testified that the self-cleaning tail pulley was accessible through a hole on the top that was 6 inches wide and 33 inches long. The tail pulley was about 14 inches from the edge of the guard. (Tr. 928, 995). Someone could come in contact with the moving parts during maintenance, cleanup, or inspection of the area. Other areas on the equipment were adequately guarded. Peres testified that the cited area was very small and that other structures were in the way. (Tr. 1030, Ex. R-205b).

I agree with Mr. Peres that the evidence shows that the opening is small and not easily accessed. I affirm the citation but find that it was not serious and that the company's negligence was low. A penalty of \$40.00 is appropriate.

4. On November 16, 2005, Inspector Crelly issued Citation No. 6291261 alleging a violation of section 56.14107(a). (Ex. G-60). The citation alleges that the tail pulley on the belt under the 602 screen was not adequately guarded. Inspector Crelly determined that an injury was unlikely but that any injury would likely be fatal. He determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Crelly testified that the smooth tail pulley was not completely guarded. The inspector believed that the guard was not high enough to completely protect the area. (Tr. 996). Mr. Peres testified that the distance between the ground and the top of the existing guard was almost seven feet. (Tr. 1037; Ex. R-205c). He also testified that the structure surrounding the cited opening provided some guarding. Peres helped build this screen and he testified that it had been in this condition since 1995 and had been inspected by MSHA many times. (Tr. 1038). No citations have been previously issued for this condition.

I credit the testimony of Mr. Peres that the opening was not easily reached and it had not been previously cited. I affirm the citation but find that it was not serious and that the company's negligence was low. A penalty of \$40.00 is appropriate.

5. On November 16, 2005, Inspector Crelly issued Citation No. 6291263 alleging a violation of section 56.14107(a). (Ex. G-61). The citation alleges that the guard on the self-cleaning tail pulley on the belt under the 611 screen was not adequately guarded. Inspector Crelly determined that an injury was unlikely but that any injury would likely be fatal. He determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation.

He testified that the opening was about 16 inches wide and 24 inches high. The fins of the tail pulley were recessed about 15 inches from the existing guard. (Tr. 634). Peres testified that, as with the previous citation, this screen has been in service for many years without

receiving a citation for the condition cited by Inspector Crelly. (Tr. 1041-42; Ex. R-205d). The screen has not been modified since it was built and it is placed in the same configuration whenever it is moved to a new location.

I credit the testimony of Mr. Peres that the opening was not easily reached and that it had not been previously cited. I affirm the citation but find that it was not serious and that the company's negligence was low. A penalty of \$40.00 is appropriate.

6. On November 16, 2005, Inspector Crelly issued Citation No. 6291265 alleging a violation of section 56.14112(b). (Ex. G-62). The citation alleges that the guard on the east side of the self-cleaning tail pulley on belt No. 7 was not secured. Inspector Crelly determined that an injury was unlikely but that any injury would likely be fatal. He determined that the violation was not S&S and that the negligence was moderate. The safety standard provides that "guards shall be securely in place while machinery is being operated, except when testing or making adjustments which cannot be performed without removal of the guard." The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Crelly testified that the bolts used to secure the guard were missing. (Tr. 936). The area was 12 inches high, 16 inches long and the area was 28 inches above the ground. (Tr. 936, 997). Peres did not observe the loose guard. (Tr. 1070; Ex. R-205e).

I find that the Secretary established a violation. A penalty of \$60.00 is appropriate.

7. On November 16, 2005, Inspector Crelly issued Citation No. 6332080 alleging a violation of section 56.12004. (Ex. G-63). The citation alleges that the female end of the yellow extension cord in the main generator trailer had the outer jacket pulled out exposing the inner conductors to mechanical damage. These conductors did not appear to be damaged. Inspector Crelly determined that an injury was unlikely but that any injury would likely be fatal. He determined that the violation was not S&S and that the negligence was moderate. The safety standard provides, in part, that "electrical conductors exposed to mechanical damage shall be protected." The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Crelly testified that the extension cord was being stored in the generator trailer. It was not being used at the time of the inspection, but he believed that it had been previously used. (Tr. 938). The electrical cord was subject to mechanical damage where the outer jacket had been pulled back.

I find that the Secretary established a violation. A penalty of \$60.00 is appropriate.

8. On November 16, 2005, Inspector Crelly issued Citation No. 6332081 alleging a violation of section 56.12004. (Ex. G-64). The citation alleges that the male end of the black extension cord in the main generator trailer had the outer jacket pulled out exposing the inner conductors to mechanical damage. These conductors did not appear to be damaged. Inspector

Crelly determined that an injury was unlikely but that any injury would likely be fatal. He determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation. The inspector's testimony with respect to this citation is the same as above.

I find that the Secretary established a violation. A penalty of \$60.00 is appropriate.

9. On November 16, 2005, Inspector Crelly issued Citation No. 6332082 alleging a violation of section 56.14107(a). (Ex. G-65). The citation alleges that the external accessory drive, alternator, and the bottom of the cooling fan on the front of the main generator engine were not guarded. People are not in the area when the generator is running. Inspector Crelly determined that an injury was unlikely but that any injury would likely be permanently disabling. He determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Crelly testified that only part of the cooling fan and other moving parts was guarded. (Tr. 946-48, 998). There was limited space in the generator trailer so that someone's clothing could get pulled into the moving parts. Peres estimated that the cited opening was about three to four inches wide. (Tr. 1044).

I find that the Secretary established a violation. A penalty of \$60.00 is appropriate.

10. On November 16, 2005, Inspector Chrystal Dye issued Citation No. 6291658 alleging a violation of section 56.14107(a). (Ex. G-68). The citation alleges that the fan belts for Caterpillar engine No. 111 needed additional guarding on the back side and that the alternator needed a complete guard to prevent persons from becoming entangled in moving machine parts. She noted that the trailer door is kept closed during operation. Inspector Dye determined that an injury was unlikely but that any injury would likely be fatal. She determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation.

The parties agreed that I should base my decision for this citation on the evidence presented with respect to Citation No. 6317432 in Docket No. CENT 2006-203-M in my April 2008 decision. The exposure was not great for this engine because it was inside a trailer. Based on that evidence, I find that the Secretary established a non-serious violation. A penalty of \$40.00 is appropriate.

11. On November 16, 2005, Inspector Dye issued Citation No. 6291659 alleging a violation of section 47.41(a). (Ex. G-73). The citation alleges that the diesel tank for the Caterpillar engine No. 111 was not labeled for its contents. Inspector Dye determined that an injury was unlikely but that any injury would likely be fatal. She determined that the violation was not S&S and that the negligence was moderate. The safety standard provides that a mine

“operator must ensure that each container of a hazardous chemical has a label . . . with the appropriate information.” The Secretary proposes a penalty of \$60.00 for this citation.

The parties agreed that I should base my decision for this citation on the evidence presented with respect to Citation Nos. 6291573, 6291636, and 6291639 in Docket Nos. CENT 2006-200-M and CENT 2006-202-M in my April 2008 decision. Based on that evidence, I find that the Secretary established a non-S&S violation of the safety standard. A penalty of \$60.00 is appropriate.

12. Prior to the hearing, the Secretary agreed to vacate Citation Nos. 6291268, 6291661, and 6291663. After the hearing, the parties agreed to settle Citation Nos. 6291651, 6291652, 6291653, 6291656, 6291657, and 629164 for a total penalty of \$252.00.

**B. CENT 2006-209-M, Plant 3.**

1. On November 2, 2005, Inspector Dye issued Citation No. 6291599 alleging a violation of section 56.14100(b). (Ex. G-84). The citation alleges that there were several safety defects on the Caterpillar 796C haul truck exposing persons to safety and health hazards. The tether strap for the door was not being used and the window would not roll up. Inspector Dye determined that an injury was unlikely but that any injury would likely be fatal. She determined that the violation was not S&S and that the negligence was moderate. The safety standard states that damaged windows shall be replaced if the absence of a window would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment. The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Dye testified that the operators of this truck were exposed to dust, rain, snow, wind, noise, and flying rocks. (Tr. 1388). She asked the equipment operator to move the window up and he could not do it. (Tr. 1410). The window was fixed and a door stop was installed to abate the citation. She has observed rocks flying off belts and other equipment at other operations. MSHA has not issued citations for excessive noise at the plant. Mr. Peres testified that the windows slide up and down. (Tr. 1442). Rocks do not fly off conveyor belts or the crusher except when rock is being dumped. A truck would have to be passing by for that to happen.

I credit Inspector Dye’s testimony that, when she asked the truck driver to close the window, he could not do so. The Secretary established a non-S&S violation. The driver was exposed to dust. A penalty of \$60.00 is appropriate.

2. On November 2, 2005, Inspector Dye issued Citation No. 6291603 alleging a violation of section 56.12002. (Ex. G-96). The citation alleges that there were seven knock-outs missing on the distribution boxes in the electrical trailer which exposed persons to electric shock hazards. Inspector Dye determined that an injury was unlikely but that any injury would likely be fatal.

She determined that the violation was not S&S and that the negligence was moderate. The safety standard states that electric controls and switches shall be of approved design and construction and shall be properly installed. The Secretary proposes a penalty of \$60.00 for this citation.

Because the knock-outs were missing there were holes in the distribution boxes. (Tr. 1393; Ex. G-96c). The boxes were in the motor control room. The knock-outs were on the top of the distribution boxes so the hazard was not great. Nevertheless, lime dust, which is corrosive, can get into the boxes and small animals can attempt to nest in the boxes. Small animals can also chew on conductors that are outside of the boxes. (Tr. 1414). Mr. Peres testified the holes created by the knock-outs were about six feet above the floor. (Tr. 1444). Any electrical components are six to eight inches inside the holes. The distribution boxes are cleaned of dust and dirt about every other month. Small animals have not built nests inside distribution boxes at the plant.

The hazard created by having holes in the top of the distribution boxes in the electrical trailer were minimal given their height. The controls in the distribution boxes were not properly installed in violation of the standard. The gravity and negligence were very low. A penalty of \$10.00 is appropriate.

3. On November 2, 2005, Inspector Dye issued Citation No. 6291608 alleging a violation of section 56.11002. (Ex. G-97). The citation alleges that 10 of the 24 steps going up to the crusher shack were bent and broken, which exposed miners to trip and fall hazards. Inspector Dye determined that an injury was unlikely but that any injury would likely be permanently disabling. She determined that the violation was not S&S and that the negligence was moderate. The safety standard provides “crossovers, elevated walkways, elevated ramps, and stairways shall be of substantial construction provided with handrails, and maintained in good condition.” The Secretary proposes a penalty of \$60.00 for this citation.

The inspector was concerned that someone could trip and fall ascending or descending the stairs. (Tr. 1397; Ex. G-97d). The staircase was sixteen feet high. The stairs were made of angle iron and expanded metal. She believed that some of the welds on the stairs had come loose. (Tr. 1416). The areas where the steps had separated had never been welded. (Tr. 1448).

The hazard created by this violation was minimal, as demonstrated by the photographs taken by the inspector. (Exs. G-97c & 97d). The gravity and negligence were low. A penalty of \$10.00 is appropriate.

4. On November 7, 2005, Inspector Dye issued Citation No. 6291612 alleging a violation of section 56.12040. (Ex. G-98). The citation alleges that there were exposed energized components in the 14 distribution boxes in the electrical trailer. The citation was modified to indicate that an injury was not likely and that the violation was not S&S. The negligence was designated as moderate. The safety standard states that operating controls shall be installed so

that they can be operated without danger of contact with energized conductors. The Secretary proposes a penalty of \$60.00 for this citation.

The inspector testified that when the doors to the distribution boxes were opened, the components within the boxes were exposed. (Tr. 1401; Ex. G-98c). Breakers and motor starters were in these boxes. The plant was not energized at the time of the inspection. These conditions created an electrocution hazard. There may be instances where a paramedic or fireman could be required to enter the electrical trailer. (Tr. 1417). Peres testified that the power would be shut down in the event of an accident. (Tr. 1449). He also stated that the motor control center has been used for 15 years in this condition and it has never been cited. He stated that he has even discussed the distribution boxes with MSHA inspectors during previous inspections.

This citation is similar to Citation No. 6317446 issued by Inspector Thomas Barrington in Docket No. CENT 2006-203-M in my April 2008 decision. For the same reasons, I find that the Secretary established a violation. Anyone who opened the cabinets to test a circuit breaker, for example, faced a risk of an electric shock hazard. The wires and terminals for the circuit breakers were totally exposed. Circuit breakers are operating controls. The fact that the company had never been cited for this condition simply reflects that its plants had never been subject to a rigorous electrical inspection. A penalty of \$60.00 is appropriate.

5. On November 8, 2005, Inspector Dye issued Citation No. 6291628 alleging a violation of section 56.9300(a). (Ex. G-99). The citation alleges that berms on the west side of the crusher were not maintained at mid-axle height for the largest piece of equipment in the area. The citation was modified to indicate that an injury was not likely and that the violation was not S&S. The negligence was designated as moderate. The safety standard provides that “berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.” The Secretary proposes a penalty of \$60.00 for this citation.

The inspector testified that the road is used for mobile equipment to travel to and from the crusher and the pit. (Tr. 1404). She estimated the drop-off to be about 10 to 20 feet. The berms were between 26 and 28 inches high while some of the equipment using the road, including front end loaders, had mid-axle heights of 36 to 38 inches. (Tr. 1406). She took several measurements. (Tr. 1421). The violation was serious because, if a vehicle were to roll down the embankment, the operator could sustain serious injuries. She observed tire tracks within nine feet of the berm. Mr. Peres testified that driving nine feet away from a berm does not create a hazard. (Tr. 1452).

The safety standard applies to the cited roadway despite its width. The Secretary established a violation, but it was not serious. A penalty of \$60.00 is appropriate.

6. On November 2, 2005, Inspector Dye issued Citation No. 6291600 alleging a violation of section 56.14107(a). (Ex. G-86). The citation alleges that the alternator and fan belts were not



guarded on the Caterpillar 773B haul truck to prevent persons from becoming entangled in moving machine parts. Inspector Dye determined that an injury was unlikely and that any injury would likely be fatal. She determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation.

The parties agreed that I should base my decision for this citation on the evidence presented with respect to Citation No. 6317432 in Docket No. CENT 2006-203-M in my April 2008 decision. Based on that evidence, I find that the Secretary established a non-S&S violation of the safety standard. Alternator and fan belts on trucks are required to be guarded, but the violation was not serious because the chance of accidental contact was not very great. A penalty of \$60.00 is appropriate.

7. On November 2, 2005, Inspector Dye issued Citation No. 6291602 alleging a violation of section 56.12018. (Ex. G-95). The citation alleges that the distribution boxes for the crossover conveyor belts were not labeled to identify which units they control. Inspector Dye determined that an injury was unlikely and that any injury would likely be fatal. She determined that the violation was not S&S and that the negligence was moderate. The safety standard requires that principal power switches be labeled to show which units they control unless identification can be made readily by location. The Secretary proposes a penalty of \$60.00 for this citation.

The parties agreed that I should base my decision for this citation on the evidence presented with respect to Citation No. 6317443 in Docket No. CENT 2006-228-M in my April 2008 decision. Based on that evidence, I find that the Secretary established a non-S&S violation of the safety standard. I credit the evidence presented by the Secretary with respect to citations alleging a violation of section 56.12018. A penalty of \$60.00 is appropriate.

8. On November 8, 2005, Inspector Dye issued Citation No. 6291629 alleging a violation of section 56.4501. (Ex. G-100). The citation alleges that there was no shutoff valve on the 80-gallon diesel fuel tank on the north side of the mine road near the lake. The inspector determined that an injury was unlikely but that it could lead to a fatal accident. She determined that the violation was not S&S and that the negligence was moderate. The safety standard provides that “fuel lines shall be equipped with valves capable of stopping the flow of fuel at the source. . . .” The Secretary proposes a penalty of \$60.00 for this citation.

The parties agreed that I should base my decision for this citation on the evidence presented with respect to Citation No. 6291580 in Docket No. CENT 2006-200-M in my April 2008 decision. Based on that evidence, I find that the Secretary established a non-S&S violation of the safety standard. A penalty of \$60.00 is appropriate.

9. On November 8, 2005, Inspector Dye issued Citation No. 6291631 alleging a violation of section 56.4101. (Ex. G-101). The citation alleges that the company failed to provide a sign prohibiting smoking or an open flame at the 80-gallon diesel fuel tank at the six-inch water pump

on the north side of the mine road. The inspector determined that an injury was unlikely but that it could lead to a fatal accident. She determined that the violation was not S&S and that the negligence was moderate. The safety standard provides that “readily visible signs prohibiting smoking and open flames shall be posted where a fire or explosion hazard exists.” The Secretary proposes a penalty of \$60.00 for this citation.

The parties agreed that I should base my decision for this citation on the evidence presented with respect to Citation No. 6291588 in CENT 2006-200-M in my April 2008 decision. Based on that evidence, I find that the Secretary established a non-S&S violation of the safety standard. The safety standard is clear on its face. Because of the actions of the Kansas Fire Marshal and the fact that previous MSHA inspections had not identified the violation, I reduce the negligence to low. A penalty of \$40.00 is appropriate.

10. Nelson Quarries withdrew its contest of Citation No. 6291596 at the hearing. (Tr. 1146). After the hearing, the parties agreed to settle Citation Nos. 6291598, 6291605, 6291606, 6291609, 6291616, 6291617, 6291622, 6291624, and 6291626 for a total penalty of \$378.00.

### **C. CENT 2006-236-M, Plant 3.**

1. On November 8, 2005, Inspector Dye issued Citation No. 6291627 alleging a violation of section 56.9301. (Ex. G-125). The citation alleges that the stop block at the dump site, which is 17 inches tall, had been compromised by a buildup of material, exposing truck operators to overtraveling hazards. After a conference, it was determined that an injury was unlikely but that any injury would likely be fatal. The negligence was moderate. The safety standard provides, in part, that berms or bumper blocks shall be provided at dumping locations where there is a hazard of overtravel. The Secretary proposes a penalty of \$60.00 for this citation.

Inspector Dye testified that trucks back up to dump rock into the crusher and the stop block was not effective because loose rock had filled up the area. (Tr. 1425-26; Ex. G-125c). The material that had been allowed to build up formed a little ramp. She determined that there was a danger of overtravel. The citation was abated by removing the loose rock. The trucks back up the ramp at a slow speed. (Tr. 1435). Mr. Peres testified that the purpose of the stop block was not compromised by the material on the ramp. (Tr. 1453). A truck operator could still determine that he should not back any further when he reaches the stop block.

The purpose of a stop block is to let the truck driver know that he is at the end of the ramp. Although there was an accumulation of material, an experienced driver would still be able to determine that he was at the end of the ramp. (Ex. G-125c). Although it was unlikely that a driver would travel too far, the stop block was compromised to a certain extent. I find that the Secretary established a violation but that it was not serious. A penalty of \$40.00 is appropriate.

2. On November 8, 2005, Inspector Dye issued Citation No. 6291634 alleging a violation of section 56.12034. (Ex. G-128). The citation alleges that the fluorescent bulbs in the scale

house were not guarded to prevent persons from being exposed to shock and burn hazards. The lights were within seven feet of the floor. She determined that an injury was unlikely and that the negligence was moderate. The safety standard provides that portable extension lights and other lights that, by their location present a shock or burn hazard, shall be guarded. The Secretary proposes a penalty of \$60.00 for this citation.

The cited fixture had two bulbs. Inspector Dye could reach up and touch them. (Tr. 1432). It was not likely that anyone would be carrying anything in the scale house that would hit or break the lights. I find that the fluorescent bulbs in the scale house did not present a shock or burn hazard. This citation is vacated.

3. On November 8, 2005, Inspector Dye issued Citation No. 6291630 alleging a violation of section 47.41(a). (Ex. G-126). The citation alleges that the 80-gallon fuel tank at the 6-inch water pump on the north side of the mine road was not labeled for its contents. Inspector Dye determined that an injury was unlikely but that any injury would likely be permanently disabling. She determined that the violation was not S&S and that the negligence was moderate. The Secretary proposes a penalty of \$60.00 for this citation.

The parties agreed that I should base my decision for this citation on the evidence presented with respect to Citation Nos. 6291573, 6291636, and 6291639 in Docket No. CENT 2006-200-M and CENT 2006-202-M in my April 2008 decision. Based on that evidence, I find that the Secretary established a non-S&S violation of the safety standard. A penalty of \$60.00 is appropriate.

4. Prior to the hearing, the Secretary agreed to vacate Citation Nos. 6291601 and 6291632. Nelson Quarries agreed to withdraw its contest of Citation No. 6291633. (Tr. 1423). After the hearing, the parties agreed to settle Citation Nos. 6291613, 6291615, 6291620, 6291621, and 6291623 for a total penalty of \$210.00.

## **II. APPROPRIATE CIVIL PENALTIES**

Section 110(i) of the Mine Act sets out six criteria to be considered in determining appropriate civil penalties. Plant 3 had a history of 6 paid violations in the two years prior to June 28, 2005, Plant 4 had a history of 21 paid violations in the two years prior to November 16, 2005. (Ex. G-136). Most of these previous violations were non-S&S. Nelson Quarries is a rather small operator and its quarries are small. All of the violations were abated in good faith. Nelson Quarries did not establish that the penalties assessed will have an adverse effect on its ability to continue in business. My gravity and negligence findings are set forth above. If I did not discuss gravity or negligence with respect to a citation, then the inspector's determinations are affirmed. Based on the penalty criteria, I find that the penalties set forth below are appropriate.

### III. ORDER

Based on the criteria in section 110(i) of the Mine Act, 30 U.S.C. § 820(i), I assess the following civil penalties:

<u>Citation No.</u>	<u>30 C.F.R. §</u>	<u>Penalty</u>
CENT 2006-205 -M, Plant 4		
6291255	56.14107(a)	\$60.00
6291256	56.14107(a)	60.00
6291258	56.14107(a)	40.00
6291261	56.14107(a)	40.00
6291263	56.14107(a)	40.00
6291265	56.14112(b)	60.00
6291268	47.44(b)	Vacated
6291651	56.14107(a)	42.00
6291652	56.14112(b)	42.00
6291653	56.14112(a)(1)	42.00
6291656	56.14112(b)	42.00
6291657	56.14107(a)	42.00
6291658	56.14107(a)	40.00
6291659	47.41(a)	60.00
6291661	47.44(b)	Vacated
6291663	56.14107(a)	Vacated
6291664	56.14107(a)	42.00
6332080	56.12004	60.00
6332081	56.12004	60.00
6332082	56.14107(a)	60.00
CENT 2006-209-M, Plant 3		
6291596	56.14100(b)	60.00
6291598	56.14107(a)	42.00
6291599	56.14100(b)	60.00
6291600	56.14107(a)	60.00
6291602	56.12018	60.00
6291603	56.12002	10.00
6291605	56.14112(b)	42.00
6291606	56.14107(a)	42.00
6291608	56.11002	10.00
6291609	56.14112(b)	42.00
6291612	56.12040	60.00

6291616	56.14107(a)	42.00
6291617	56.14107(a)	42.00
6291622	56.14107(a)	42.00
6291624	56.14107(a)	42.00
6291626	56.14107(a)	42.00
6291628	56.9300(a)	60.00
6291629	56.4501	60.00
6291631	56.4101	40.00

CENT 2006-236-M, Plant 3

6291601	47.44(b)	Vacated
6291613	56.14112(b)	42.00
6291615	56.14107(a)	42.00
6291620	56.14112(b)	42.00
6291621	56.14107(a)	42.00
6291623	56.14112(b)	42.00
6291627	56.9301	40.00
6291630	47.41(a)	60.00
6291632	56.18002(a)	Vacated
6291634	56.12034	Vacated
6291633	56.30(a)	60.00

TOTAL PENALTY \$2,060.00

Accordingly, the citations contested in these cases are **AFFIRMED**, **MODIFIED**, or **VACATED** as set forth above and Nelson Quarries, Inc., is **ORDERED TO PAY** the Secretary of Labor the sum of \$2,060.00 within 40 days of the date of this decision. Upon payment of the penalty, these proceedings are **DISMISSED**.

Richard W. Manning  
Administrative Law Judge

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RWM