FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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December 26, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. CENT 1999-178
Petitioner,	:	A.C. No. 34-01787-03543
	:	
v.	:	Mine: Pollyanna No. 8
GEORGES COLLIERS, INC.,	:	
Respondent,	:	
SECRETARY OF LABOR	:	Docket No. CENT 2000-391
MINE SAFETY AND HEALTH	:	A.C. No. 34-01787-03576-A
ADMINISTRATION (MSHA),	:	
	:	Mine: Pollyanna No. 8
v.	:	
	:	
VINCENT SMEDLEY, Employed by	:	
GEORGES COLLIERS, INC.,	:	
SECRETARY OF LABOR,	:	Docket No. CENT 2000-400
MINE SAFETY AND HEALTH	:	A. C. No. 34-01787-03578-A
ADMINISTRATION (MSHA),	:	
	:	Mine: Pollyanna No. 8
v.	:	
	:	
KENNETH CLARK, Employed by	:	
GEORGES COLLIERS, INC.,	:	
SECRETARY OF LABOR,	:	Docket No. CENT 2000-401
MINE SAFETY AND HEALTH	:	A.C. No. 34-01787-03578-A
ADMINISTRATION (MSHA),	:	
	:	
v.	:	Mine: Pollyanna No. 8
	:	
TIM BALL, Employed by	:	
GEORGES COLLIERS, INC.,	:	

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. CENT 2000-157
Petitioner	:	A.C. No. 34-01707-03532
	:	
v.	:	Docket No. CENT 2000-197
	:	A.C. No. 34-01707-03531
	:	
GEORGES COLLIERS	:	Docket No. CENT 2000-263
INCORPORATED,	:	A.C. No. 34-01707-03533
Respondent.	:	
	:	Docket No. CENT 2000-264
	:	A.C. No. 34-01707-03534
	:	
	:	Docket No. CENT 1999-278
	:	A.C. No. 34-01707-03530
	:	
	:	Docket No. CENT 2000-326
	:	A.C. No. 34-01707-03535
	:	
	:	Docket No. CENT 2000-474
	:	A.C. No. 34-01707-03537
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	:	Docket No. CENT 2000-475
	:	A.C. No. 34-01707-03538
	:	
	:	Pollyanna No. 6
	:	
	:	Docket No. CENT 1999-50
	:	A.C. No. 34-01787-03541
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	:	A.C. No. 34-01787-03542
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	:	Docket No. CENT 1999-179
	:	A.C. No. 34-01787-03544
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	:	Docket No. CENT 1999-180
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: Docket No. CENT 2000-165
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: Docket No. CENT 2000-166
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: Docket No. CENT 2000-418
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: Docket No. CENT 2000-426
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:	Docket No. CENT 2000-428
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:	Docket No. CENT 2001-6
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:	Docket No. CENT 2001-7
:	A.C. No. 34-01787-03589
:	
:	Pollyanna No. 8
:	
:	Docket No. CENT 2000-163
:	A.C. No. 34-01790-03509
:	
:	Milton Mine

DECISION

Appearances: Christopher V. Grier, Esquire, and Brian Duncan, Esquire, Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, for the Secretary;
Elizabeth M. Christian, Esquire, San Antonio, Texas, for the Respondent.

Before: Judge Barbour

These consolidated civil penalty cases arise under Sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act or Act) (30 U.S.C. §§815, 820).[1] They involve allegations that Georges Colliers, Inc. (GCI) and its named supervisory agents were responsible for several violations of mandatory safety standards for underground coal mines, as well as allegations that GCI alone was responsible for numerous other violations. The cases were heard in Fort Smith, Arkansas. Counsels have submitted briefs.

[1] At the hearing counsel for GCI stated that one of the cases, Docket No. CENT 2000-157, is associated with a section 110(c) (30 U.S.C. § 820 (c)) proceeding the Secretary is preparing to file against GCI employee, Al Lolly. (Section 110(c) provides that whenever an agent of the operator knowingly violates a mandatory safety standard a civil penalty will be assessed against the agent.) Counsel maintained Docket No. CENT 2000-157 should be tried with the section 110(c) proceeding. Therefore, counsel orally moved that Docket No. CENT 2000-157 be severed from the consolidated cases and be stayed pending the filing of the case against Lolly. Over the objection of counsel for the Secretary, the motion was granted (Tr. 10-11). The oral order severing and staying Docket No. CENT 2000-157 is affirmed.

In the cases involving GCI and its supervisory agents (Docket Nos. CENT 1999-178, etc.), the issues are whether GCI violated the standards as alleged, and whether the agents knowingly violated them. If violations are found to have occurred, the questions become the amounts of the civil penalties that must be assessed against the company and against the individuals in light of the statutory civil penalty criteria.

In the cases involving the violations that are not associated with the individual civil penalty cases (Docket Nos. CENT 2000-197, etc.), the parties have submitted extensive stipulations effectively limiting the cases to the single issue of whether the amount of the civil penalties assessed will affect GCI's ability to continue in business.

DOCKET NOS. CENT 1999-178, ETC., STIPULATIONS

The parties agree as follows:

> 1. [GCI] is engaged in mining and its mining operations affect interstate commerce . . .[;]
>
> 2. [GCI] is the owner and operator of the Pollyanna No. 6 [Mine], Pollyanna No. 8 [Mine], and [the] Milton [Mine] . . . but . . . no longer operate[s] any of those mines as of December 1, 2000 . . . [;]
>
> 3. [GCI] is subject to the jurisdiction of the [Act] . . . [;]
>
> 4. [The] . . . Administrative Law Judge has jurisdiction in this matter[;]
>
> 5. [T]he subject citations were properly served by Fred Marietti, Earl R. Simmons and Gary W. Jones, duly authorized representatives of the Secretary upon . . . agent[s] of. . . [GCI] on the date and place stated therein and may be admitted into evidence for the purpose of establishing their issuance and not for the truthfulness or relevancy of any statements asserted therein[;]
>
> 6. [T]he exhibits to be offered by [the Respondent] and the Secretary are stipulated to be authentic but no stipulation is made to their relevance or the truth of the matter asserted therein[;]

7. [GCI] is a mine operator with 407,034 tons of production in 1997 and 334,912 tons of production in 1998[;][2]

8. [C]ertified copies of . . . [MSHA's] assessed violations history accurately reflect the history of the mine for two years prior to the date of the citations and/or orders[;]

9. Tim Ball, Kenneth Clark and James V. Smedley are no longer employed by [GCI][;]

10. Tim Ball, Kenneth Clark and James V. Smedley have no previous history of being cited for violations of the [A]ct as agents nor as miners (Tr.13-15; *see also* Tr. 481).

GCI, ITS MANAGEMENT PERSONNEL, AND THE POLLYANNA NO. 8 MINE

Craig Jackson, the president of GCI, testified regarding the history of GCI and its involvement with mining. Jackson explained that GCI came into existence in the early 1990s, when it was formed to take over the operations of P&K[3] and HMI, two small eastern Oklahoma coal operators. Both P&K and HMI faced financial difficulties and both sought financial aid from Heller Financial, Inc., a Chicago investment firm. Heller acquired the assets of the companies, including the Pollyanna No. 8 Mine, and GCI was formed to own and operate the mines (Tr. 522).

GCI borrowed funds from Heller to finance its operations. As part of the loan arrangements, GCI gave Heller production estimates, which if maintained, would provide GCI with sufficient revenue to generate a profit and to service the loan payments.

When GCI's initial attempts at profitability were unsuccessful, Craig Jackson was hired to reverse GCI's financial situation (Tr. 522-523). Jackson, was named vice president for underground operations and was put in charge of the underground operations at the Pollyanna No. 8 Mine (Tr. 522-523). Under Jackson's direction the economic situation improved, but GCI still did not meet its production projections. As a result GCI continued to have difficulty making a profit and servicing its loan.

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[2] The parties also agree that the company employs less than 50 persons and is small in size (Tr. 110-111).

[3] The transcript erroneously refers to the company as PNK, rather than to its correct name, P&K (*see* GCI Br. 5 n.1).

In January 1998, Jackson was named president (Tr. 523-524, 575). As president, Jackson was responsible for running the entire company. The company's individual mine superintendents were responsible for day-to-day operations at its mines. Jackson's primary task remained to make GCI profitable (Tr. 558) and Jackson was candid about the difficulties he faced. He stated, "[GCI had] . . . severe violation problems. Production was not up to par. We [also] had administrative structural problems" (Tr. 524). One of the "administrative structural problems" was finding proper personnel to fill management positions (Tr. 525-526). Jackson believed this was due to "shortcomings in [mining] experience" among potential supervisors in eastern Oklahoma (*Id.)*.

After becoming president, Jackson instituted personnel changes. He put Tim Ball in charge of purchasing supplies and equipment for the Pollyanna No. 8 Mine. He also assigned Ball to help train miners (Tr. 639). Ball had other duties as well. Jackson believed he could rely on Ball, in part, because Ball knew the mine. Ball had worked at Pollyanna No. 8 Mine before GCI took over (Tr. 638-639). Ball viewed himself, in some ways, as a de facto mine superintendent (Tr. 641, 685).

In October 1998, Jackson hired Steve Brown as the actual superintendent of the Pollyanna No. 8 Mine (Tr. 532, 640). Until then, Ball believed that he was "pretty much running [the] mine" (Tr. 640). However, Jackson wanted more coal cut, so Jackson brought Brown in to make the mine more productive.

Jackson testified that in addition to his concern about productivity, he was concerned about the number of alleged violations cited at the mine and about the relationship between mine and MSHA personnel (Tr. 530). He stated that Brown's "primary focus" was "to try to safely get production up and . . . [to] try to alleviate . . . some of the conflict . . . between [GCI personnel] and MSHA" (*Id.)*. Jackson thought that Brown was very experienced and a good miner (Tr. 528).

When Brown became supervisor, Ball was "moved up" to the position of business unit manager because Jackson had "some issues with . . . Brown's ability to do . . . administrative work" (Tr. 535-536). According to Jackson, the change "allow[ed] . . . Brown to concentrate on the underground aspects of the mine, and . . . allow[ed] . . . Ball . . . to handle the administrative . . . [and] other . . . project-related aspects . . . of the mine" (*Id.*). Ball agreed that as a result of the change Brown "was handling the underground operations" and he, Ball, "was handling the surface administrative operations" (Tr. 694, *see also* Tr. 650, 691-692). In addition, Brown had authority to hire and fire employees and to authorize pay raises (Tr. 533). In Jackson's view, it was Brown who had ultimate responsibility for the operation of the mine. Brown was responsible for implementing mine plans and for overseeing mining (Tr. 555). Jackson did not give Brown directives (Tr. 533). However, when it came to health and safety, Jackson agreed that it was not entirely clear who was responsible (Tr. 555, 558). The legal identity report that Jackson signed on behalf of the company identified both Ball and Brown as "Person[s] with Overall Responsibility for a Health and Safety Program at All of the Operator's Mines" (Tr. 555, 558, 560; Resp. Exh. 1).

After Brown became the superintendent, production increased. However, Brown's relationship with the miners was far from smooth. Jackson heard that Brown was abrupt and rough. Brown denied the allegations, but the rumors continued to come to Jackson's attention (Tr. 529, 534).

Shortly after November 3, 1998, Brown was demoted to section foreman, and Ball was assigned to act as superintendent (Tr. 691). A few weeks thereafter, Brown was formally warned about the way he related to other employees. Brown's problems with the miners continued and early in 1999, Brown was fired (Tr. 687-688; Resp. Exh. 15, Resp. Exh. 16). Ball signed Brown's warning and separation notices (Tr. 689, 691; Resp. Exh. 15, Resp. Exh. 16).

THE NOVEMBER 3, INSPECTION

On the evening of November 3, 1998, MSHA inspectors arrived at the Pollyanna No. 8 Mine. Among the inspectors was Fred Marietti. Brown and Ball were not at the mine. They had left for the day and gone home. However, Jackson stopped by the mine on his way home from the GCI office. The MSHA authorities told Jackson they had come to the mine to conduct an inspection. Jackson wanted a GCI management official at the mine during the inspection. Since Brown was coming back to the mine at 4:00 a.m. the next morning, he decided that Ball should "cover" until Brown returned (Tr. 549). Jackson called Ball and asked him to return to the mine (Tr. 549, 655). Jackson especially wanted Ball present because Ball had worked with Jackson on submitting a request to MSHA to approve taking 30-foot cuts during advance mining. Jackson stated he knew "that the 30-foot cuts were going to be an issue" (Tr. 549, 563, *see also* Tr. 551-552).[4]

It was Inspector Marietti's first visit to the mine (Tr. 53). Prior to arriving, Marietti was told to be on the lookout for extended cuts and inadequate ventilation (Tr. 27). When he got to the mine, Marietti was joined by MSHA inspection supervisors, Art Gore and Gary Jones, and by MSHA inspector Earl Simmons (Tr. 53). On November 3, there were approximately nine persons working underground and one person working on the surface (Tr. 25, 27).

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[4] Early in 1998, Ball drafted a proposal to allow continuous mining machines (continuous miners or miners) to take 30-foot cuts. The company submitted the plan to MSHA for approval (Tr. 652). According to Ball, sometime between August and September 1998, Jackson went to the MSHA District Office in Denver to discuss the plan. MSHA approved a restricted version of the plan that allowed the company to take 30-foot cuts, but only during retreat mining. The company then sought specific approval to take 30-foot cuts during advance mining (Tr. 543-544). MSHA responded by allowing the cuts on a temporary basis in the presence of an MSHA technical inspector (Tr. 544). The agency never gave unrestricted approval for 30-foot cuts.

After Marietti changed his clothing, he and Simmons proceeded underground (Tr. 54). They traveled to the 001 section. They proceeded to the No. 1 and the No. 2 entries, then to the No. 3 entry where mining was underway. There, Simmons and Marietti observed conditions that lead Simmons to issue all but one of the citations and orders that are contested in the individual civil penalty proceedings (Tr. 56).

THE DECEMBER 4, INSPECTION

On December 4, 1998, Jones returned to the mine to finish the November 3, inspection (Tr. 274). As an inspector, Jones was required to issue a citation or order whenever he observed what he believed to be a violation of the Act or the regulations. Jones traveled to the 001 section where active mining was taking place. He walked into the area between the No. 5 and No. 6 cross cuts. There, Jones observed conditions that lead him to cite the remaining violation that is at issue in the individual civil penalty proceedings.

MSHA'S DECISION TO CHARGE THE INDIVIDUAL RESPONDENTS WITH SECTION 110(c) LIABILITY

In late February or early March 1999, MSHA assigned Inspector Danny Vetter to further investigate the citations and orders that were issued in November and December 1998, and to recommend whether any individuals should be held liable personally for the alleged violations. Vetter traveled from his Colorado office to Oklahoma where he spoke with miners who worked at the Pollyanna No. 8 Mine.

As part of the investigation, Vetter attempted to determine the persons who were in charge at the mine. One of the first persons he interviewed was Danny Hill, the continuous miner operator on the November 3 and December 4, evening shifts (Tr. 306). In addition to Hill, Vetter also interviewed James Smedley. Vetter testified that Smedley identified himself as the evening shift foreman and supervisor (Tr. 312-313). Vetter also spoke with Kenneth Clark who Vetter believed was the foreman of the afternoon shift— the shift prior to Smedley's. Vetter did not speak with Tim Ball (Tr. 308-310), but Vetter testified that his investigation revealed that Ball was one of those "calling the shots" at the mine (Tr. 313). This was confirmed by many of the hourly employees to whom Vetter spoke (*Id.*). Vetter acknowledged that positions and titles at a mine change frequently. Therefore, what Vetter looked for was whether the miners regarded a person as having supervisory authority and whether that person actually had some control over the operation of the mine (Tr. 314, 484). In Vetter's opinion, Ball met these criteria (Tr. 485).

As a result of the investigation, Vetter recommended that Smedley, Clark and Ball be charged with individual liability for knowing violations of the regulations (Tr. 481).

ALLEGATIONS OF VIOLATIONS AND §110(c) LIABILITY

CITATION/ORDER NO.	DATE	30 C.F.R.§
4715067	11/3/98	75.370(a)(1)

Order No. 4715067, which was issued pursuant to section 104(d) of the Act, states:

> The operator failed to comply with page 8, of the Ventilation Plan approved 9/30/98 in that 3,000 cfm of air was not maintained where the roof bolting machine was installing roof bolts in the No. 3 entry left cross cut on the 001 MMU. No air movement could be detected at the roof bolter when checked with an anemometer. The line brattice was observed not properly installed. 0.6% of methane was detected where the roof bolter was observed drilling (Gov. Exh. 1).

At approximately 10:11 p.m., Marietti saw a roof-bolting machine in the No. 3 entry, left cross cut. Tim Sisco, operator of the machine, was beginning to install roof bolts (Tr. 63, 81, 83). In addition, Marietti observed a continuous miner operated in the entry. The miner was backing out of a cross cut (Tr. 83-84). Danny Hill was operating the miner (Tr. 63-64). As best Marietti could recall, Smedley was the only supervisory person on duty during the shift (Tr. 48).

Marietti approached the roof-bolting machine. He checked the velocity of air at the machine with an anemometer. The mine ventilation plan required a velocity of at least 3,000 cubic feet per minute (cfm) to flow over the machine (*see* Tr. 32, 37, 59; Gov. Exh. 17 at 17). Marietti's anemometer detected no air movement. The lack of ventilation was due to the fact that a line brattice was dislodged (Tr. 35). Although the brattice should have extended on a diagonal across the No. 3 entry, 16-feet of it had fallen to the floor (Tr. 35, 41, 47-48; Gov. Exh. 12) where part of it was "kind of rolled up in a ball", crumpled, and "covered with muck and mud and coal" (Tr. 51, 317, *see also* Tr. 45, 319; Gov. Exh. 12). The fallen brattice was obvious (Tr. 41).

The mine had a history of liberating methane. In fact, Hill told Marietti when coal was cut at the mine, "a lot" of methane was liberated (Tr. 63). Marietti checked the atmosphere around the roof-bolting machine and found .6 % methane (Tr. 61). This was not an excessive amount of methane, but there was no ventilation to remove it nor to remove any subsequently liberated methane (Tr. 61). Marietti believed without ventilation there was a danger the methane would accumulate and reach the point where it would ignite (Tr. 38). Smedley also thought this was possible (Tr. 724). An ignition source for the methane could be the arcs and sparks that sometimes resulted during roof bolting (Tr. 38). Also, the roof-bolting machine had electrical components and the machine's trailing cable carried electricity (*Id.*, 60). An ignition could be fatal to miners (Tr. 39). Marietti also feared that dust from drilling the roof could present a respirable health hazard since there was no ventilation (Tr. 37-38).

Seven miners who worked in close proximity to one another in the entry, were exposed to the hazards (Tr. 38-39). Furthermore, Marietti believed the lack of ventilation was a significant and substantial contribution to a mine safety hazard (S&S) because as mining continued without ventilation, an ignition was reasonably likely to occur (*Id.*).

Marietti found the violation was caused by GCI's unwarrantable failure to comply with its ventilation plan. Sisco and Hill told Marietti that Smedley had been on the section, in the vicinity of the roof-bolting machine, shortly before Marietti arrived (Tr. 49). Sisco said that Smedley told him the entry was ready for mining and that he should begin roof bolting (Tr. 41). Vetter testified that four or five months later when he too spoke with Sisco, Sisco's story had not changed. Sisco told Vetter that Smedley said "everything's fine, I took the gas check, just go in and [roof] bolt" (Tr. 316, *see also* Tr. 318, 322, 339). However, everything was not "fine". There was no ventilation.

Marietti believed Smedley should have known from seeing the fallen brattice that there was inadequate air at the roof-bolting machine (Tr. 44). Indeed, since the ventilation requirements of the plan could not be met without a properly installed line brattice, Marietti was certain that Smedley knew the ventilation was inadequate. Marietti also believed that the brattice was allowed to remain down on purpose so the roof-bolting machine could be operated in the left cross cut while at the same time the continuous miner could be operated in the opposite cross cut. Hill told Marietti this was what actually happened (*Id.*, Tr. 316-317).

Smedley responded that when the inspectors arrived he was working in a different entry — approximately 200 feet from the No. 3 entry. He maintained he never saw the brattice on the mine floor and did not know about the lack of ventilation at the roof-bolting machine until after the condition was cited (Tr. 705-706). Smedley asserted that he had been in the entry prior to the roof bolter moving into the left cross cut. At that time the brattice was properly installed (Tr. 720-721; *see* Gov. Exh 12.). Smedley pointed out that the continuous miner could have tore down the line brattice after he left the area (Tr. 727, 733).[5]

Smedley stated that he was not always present while the continuous miner machine and the roof-bolting machine were operating (Tr. 728). Moreover, he was the only foreman on the shift. He had many responsibilities including the training of newly employed and inexperienced miners (Tr. 708). He did not have a full crew on November 3 (Tr. 706). He acknowledged that he had not said much to the inspectors when they questioned him about conditions on the section, but this was because he found the inspectors "very intimidating" (Tr. 726).

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[5] Although the brattice looked as though it had not been used in "awhile" (Tr. 45), Marietti acknowledged if it had been pulled down by the continuous miner, it could have become dirty and crumpled in very little time (Tr. 66-67), and that it could have been torn down after Smedley made his on-shift examination (Tr. 68).

THE VIOLATION

Section 75.370(a)(1) requires an operator to "develop and follow a [mine] ventilation plan approved by the [Secretary]" (30 C.F.R. §75.370(a)(1)). Once the plan is approved and adopted its provisions are enforceable as mandatory standards (*Freeman United Coal Mining Co.*, 11 FMSHRC 161, 164 (February 1989), *Jim Walter Resources, Inc.*, 9 FMSHRC 903, 907 (May 1987); *see also Zeigler Coal Co. v. Kleppe*, 536 F.2d 398, 409 (D.C. Cir. 1976)). Here, the approved and adopted plan required a minimum quantity of 3,000 cfm of air to pass by the roof-bolting machine while the machine was operating (Tr. 32, 37, 59; Gov. Exh. 17 at 17). Marietti's testimony that he attempted to measure the air and was not able to detect any movement was not refuted (Tr. 35). The violation existed as charged.

GRAVITY AND S&S

The hazards posed by the violation—those of a dangerous methane build up and/or of exposure to respirable dust—were described by Marietti. It is true that Marietti measured only .6% methane. However, without ventilation the quantity of methane reasonably could have been expected to increase. All of the witnesses agreed that the Pollyanna No. 8 Mine liberated methane, and Marietti's testimony that he was told it liberated "a lot" of methane was not disputed (Tr. 63). Moreover, the testimony established that several potential ignition sources were present. The act of drilling into the roof could have resulted in arcs and sparks, and the roof-bolting machine itself had electrical components which could have malfunctioned (Tr. 60). Ignition of the methane could have caused Sisco's death or serious injury. It also could have endanger the other miners working on the section.

The explosion hazard was augmented by the fact that without perceptible air movement, respirable dust created by the drilling could not escape (Tr. 37-38). While this hazard was not as immediate as that posed by a build up of methane, it nevertheless contributed to the overall danger caused by failing to comply with the approved ventilation plan.

In addition to being very serious, the violation was S&S. A violation is properly designated as "significant and substantial" if, based on 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 Division, National Gypsum Co.*, 3 FMSHRC 822, 825 (April 1981)). In *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (January 1984), the Commission explained:

> In order to establish that a violation of a mandatory safety standard is significant and substantial under *National Gypsum* the Secretary must prove: (1) the underlying violation of a mandatory safety standard, (2) a discrete safety hazard -- that is, a measure of danger to safety -- contributed to by the violation, (3) a reasonable likelihood that the hazard contributed to will result in an injury,

and (4) a reasonable likelihood that the injury in question will be of a reasonably

serious nature. (*See also Austin Power Inc. v. Secretary*, 861 F.2d 99, 103-104 (5th Cir. 1988), *aff'g* 9 FMSHRC 2015, 2021 (December 1987) (*approving Mathies* criteria)).

The third element of the *Mathies* formula requires the Secretary to 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.*, 6 FMSHRC 1834, 1836 (August 1984)). The likelihood of such injury must be evaluated in terms of continued normal mining operations without any assumptions as to abatement (*U.S. Steel Mining Co., Inc*., 6 FMSHRC 1573, 1574 (July 1984); *see also Halfway, Inc*., 8 FMSHRC 8, 12 (January 1986); *Southern Ohio Coal Co.*, 13 FMSHRC 912, 916-17 (June 1991)).

The Secretary's proof satisfies all of the elements of *Mathies*. There was an underlying violation of section 75.370(a)(1). The violation contributed to the hazard of methane accumulating in the atmosphere around the roof-bolting machine operator. As mining and roof bolting continued there was a reasonable likelihood that methane would reach dangerous levels given the total lack of ventilation and the propensity of the mine to liberate methane. No one disagreed with Marietti that the roof-bolting machine had electrical components that could arc or spark and that the very act of drilling into the roof could produce sparks (Tr. 38, 60). If methane accumulated due to the lack of ventilation and an explosion resulted, it was reasonably likely that Sisco and perhaps the other miners on the section would have been seriously burned or even killed.

NEGLIGENCE AND UNWARRANTABLE FAILURE

Negligence is the failure to exercise the care due under the circumstances. Smedley, the section supervisor, was responsible for making sure there was compliance with the ventilation plan. The plan required a minimum of 3,000 cfm of air at the roof-bolting machine. Therefore, Smedley was required to ensure that the air velocity met the requirement.

Smedley testified that when mining was taking place in the No. 3 entry, he was working about 200-feet away; and that he was not always present when the continuous miner and the roof-bolting machine were operating (Tr. 706-708). He also maintained that he had other responsibilities requiring his presence and attention (Tr. 728). I have no doubt all of this is true, but it is beside the point. The other duties and the demands on his time did not divest Smedley of responsibility. Rather, supervisors are held to a higher standard of care because of their many responsibilities.

Smedley knew that coal was being cut and the roof was being bolted in the No. 3 entry. Smedley also knew that the mine liberated methane. While these operations were on-going,

Smedley should have determined whether there was adequate ventilation as specified in the plan. There is no indication he did. In failing to ensure compliance with the plan while roof bolting and mining were taking place, Smedley, and through Smedley, GCI, failed to meet the standard of care required. Therefore, I conclude GCI was negligent.

In *Emery Mining Corp.*, 9 FMSHRC 1997 (December 1987), the Commission determined that unwarrantable failure is aggravated conduct constituting more than ordinary negligence (9 FMSHRC at 2001). The Commission stated the conduct is characterized by "reckless disregard", "intentional misconduct", "indifference", or a "serious lack of reasonable care" (9 FMSHRC at 2003-04; *Consolidation Coal Co.*, 22 FMSHRC 340, 353 (March 2000) *see also Buck Creek Co. Inc. v. FMSHRC*, 52 F.3d 136 (7th Cir. 1995) (approving Commission's unwarrantable failure test)).

Whether conduct is "aggravated" in the context of unwarrantable failure is determined by looking at all of the facts and circumstances of the case. Factors that may be indicative of aggravated conduct include the length of time the violation has existed; whether the violation is obvious or poses a high degree of danger; whether the operator has been placed on notice that greater efforts are necessary for compliance; the operator's efforts in abating the violative condition; and the operator's knowledge of the existence of the violation (*see Cyprus Emerald Resources Corp.*, 20 FMSHRC 790, 813 (August 1998), *rev'd on other grounds*, 195 F.3d 42 (D.C. Cir. 1999); *Midwest Material Co.*, 19 FMSHRC 30, 34 (January 1997); *Mullins & Sons Coal Co.*, 16 FMSHRC 192, 195 (February 1994); *Peabody Coal Co.*, 14 FMSHRC 1258, 1261 (August 1992); *BethEnergy Mines, Inc.*, 14 FMSHRC 1232, 1243-44 (August 1992); *Quinland Coals, Inc.*, 10 FMSHRC 705,709 (June 1988); *Kitt Energy Corp.*, 6 FMSHRC 1596, 1603 (July 1984)).

The testimony establishes that the failure to comply with the ventilation plan was caused by the fact that the line brattice was down. Vetter testified, without dispute, that there was no way to meet the plan's ventilation requirements without the brattice being in place (Tr. 316-317). Marietti believed that the fallen brattice was so obvious Smedley should have known there was inadequate ventilation (Tr. 41). However, although Marietti thought the brattice had been on the floor for "awhile" (because it was covered with dirt and coal residue) he agreed that it could have become that way by being pulled down recently by the continuous miner (Tr. 66-67). Moreover, he admitted it could have been pulled down after Smedley visited the area (Tr. 68).

This is exactly what Smedley said happened. He was adamant that the brattice was in place when he was in the area. Further, Smedley was not contradicted when he testified that the continuous miner was configured in such a way Hill might not have known if the machine tore down the brattice (Tr. 727, 733). If Smedley did not visit the entry after the brattice was torn down, then he would not have known of the situation. Further, if Hill was unaware the brattice had fallen, then he could not have alerted Smedley to the problem.

The Secretary did not establish the brattice was on the floor when Smedley was in the entry, and a preponderance of the evidence does not establish that Smedley, and through

Smedley, GCI, was on notice that the violation was in existence a long period of time. The record does not support finding that Smedley was more than ordinarily negligent in failing to discover and correct the ventilation deficiency when roof bolting was taking place. Therefore, I find that GCI did not unwarrantably fail to comply with section 75.370(a)(1).

SMEDLEY'S 110(C) LIABILITY

The proper inquiry for determining liability under section 110(c) is whether the corporate agent knew or had reason to know of the violative condition (*Kenny Richardson*, 3 FMSHRC 8, 16 (January 1981), *aff'd on other grounds*, 689 F.2d 632 (6th Cir. 1982, *cert. denied* 461 U.S. 928 (1983); *accord Freeman United Coal Mining Co. v. FMSHRC*, 108 F.3d 358, 362-362 (D.C. Cir. 1997)). To establish 110(c) liability the Secretary must prove only that the individual knowingly acted, not that the individual knowingly violated the law *(Warren Steen Constr., Inc.*, 14 FMSHRC 1125, 1131 (July 1992*)(citing United States v. Int'l. Minerals & Chem. Corp.*, 402 U.S. 558, 563 (1971)). An individual acts knowingly where he is "in a position to protect employee safety and health [and] fails to act on the basis of information that gives him knowledge or reason to know of the existence of a violative condition" *(Kenny Richardson*, 3 FMSHRC at 16). Moreover, section 110(c) liability is predicated on aggravated conduct constituting more than ordinary negligence (*Target Industries, Inc.*, 23 FMSHRC 945, 963 (September 2001)).

Smedley was the section supervisor and therefore an agent of GCI. However, because the necessary predicate of conduct constituting more than ordinary negligence does not exist, Smedley is not individually liable for the violation of section 75.370(a)(1).

CITATION/ORDER NO.	DATE	30 C.F.R.§
4715068	11/3/98	75.362(d)(2)

Order No. 4715068, which was issued pursuant to section 104(d) of the Act, states:

> The roof bolter operator and the foreman did not do an adequate on-shift examination in that neither person made the methane test at the face from under permanent roof support using an extendable probe or other acceptable means before the roof bolter was brought into the No. 3 entry left cross cut of the 001MMU. The roof bolter was observed bolting roof in this entry. When questioned by the . . . [inspector], the foreman and the roof bolter operator stated that neither had made the required test at the face. The foreman made a methane test at the last row of roof bolts according to the foreman, Vince Smedley, and did not use an extendable probe. The coal face was about 20 feet inby the last row of permanent roof support. 0.6% methane was detected when tested by MSHA at the last row of roof bolts. This entry was cited on. . . [Order] No. 4715067 for not having any ventilation in this entry while roof bolting (Gov.

Exh. 2).

While Marietti was in the left cross cut and after he confirmed there was no ventilation, he asked Sisco whether methane checks were being made at the face. Sisco replied that he did not have an extendable probe (Tr. 90, 108).[6] Smedley had a methanometer in his possession, but the extendable probe was on another roof-bolting machine, approximately 150- to 200-feet from the No. 3 entry (*Id.*). Marietti believed that not using a probe to check for methane was a violation of section 75.362(d)(2), a regulation that in part requires a qualified person to test for methane "at the face from under permanent roof support, using extendable probes" (Tr. 108, *see also* Tr. 102).

Marietti spoke with Smedley about the situation. Smedley said that he tested for methane but did not use a probe. Smedley did not say where the test took place (Tr. 100-101). However, Sisco told Marietti that Smedley took the test at the last row of roof bolts (Tr. 93).

Even though there never had been an explosion at the mine (Tr. 103), Marietti believed failing to take the methane reading at the face with an extendable probe was "highly likely" to result in conditions leading to one. The lack of ventilation meant that methane could build up rapidly (*see* Tr. 90-91, 94). Also, roof bolting activities could result in a spark which in turn could serve as an ignition source. If a concentration of methane migrated back to the roof bolting machine and ignited, the explosion could result in a serious burn injury to Sisco or in his death. Marietti also noted that because the entry recently had been cut, no rock dust was present to reduce chances that an explosion would propagate throughout the entry (Tr. 96). He stated "basically this could [have] resulted in a catastrophic accident" in which all of the miners on the section could have died (*Id.*). Without testing at the face, Smedley could not know if methane had built or was building to a dangerous level (Tr. 102).

Crediting Sisco's statement that Smedley had checked for methane at the last row of roof bolts not at the face, Marietti thought it should have been obvious to Smedley that he was checking from the wrong location (Tr. 98-99). Smedley was the supervisor. Despite the fact he knew or should have known what was required, he did not comply (Tr. 101). In Marietti's opinion, this was aggravated conduct.

Based on his interview with Sisco, Vetter thought that Smedley should be found liable for the violation (Tr. 336, 340). Vetter noted that when Marietti asked Smedley why he did not take the test with a probe, Smedley replied that he "just didn't" (Tr. 340).

Smedley listed several problems he had while running the section — a new haulage system that frequently stopped; employee absenteeism; and inexperienced miners who required training.

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[6] An extendable probe is a device that allows a person to check for methane from under supported roof. A methanometer is attached to the end of a pole. A person stands under supported roof and extends the pole inby to the face where the methanometer records the methane content.

Because of these problems Smedley stated he had delegated the responsibility for taking the tests to Sisco (Tr. 710). In a mine as small as Pollyanna No. 8, Smedley believed such a delegation was "fairly normal" (Tr. 711).

THE VIOLATION

Section 75.362(d)(2) requires a qualified person to make tests for methane "at the face from under permanent roof support, unless extendable probes or other acceptable means are used". The evidence establishes that the face in the cross cut was located 20-feet inby the last row of roof supports (Gov. Exh. 2). Therefore, it was impossible for a certified person to conduct a methane test at the face from under permanent roof support without using an extendable probe.

An extendable probe was not located in the vicinity of the roof-bolting machine. Marietti did not see one, and his testimony that he was told it was between 150- to 200-feet away from the roof-bolting machine was not contradicted (Tr. 108). In addition, Marietti's testimony that Sisco admitted he did not check for methane at the face because the probe was unavailable was not refuted, and I credit it (Tr. 90,108). I also believe that Smedley told Marietti he took the test but that he did not use a probe (Tr. 101). Smedley appeared as a witness. Had he taken a test at the face with a probe, it would have been in his self interest to say so.

Smedley was the supervisor. He was certified to test for methane and he was responsible for making sure such tests were conducted properly. The evidence establishes that neither Smedley (nor anyone else) tested for methane "at the face from under permanent roof support" as required by the standard, and I therefore find that the violation existed as charged.

GRAVITY AND S&S

The violation was very serious and S&S. Because the mine freely liberated methane it was important to make sure the requirements for methane testing were observed. Failing to test for methane at the face meant that the point where methane was most likely to be liberated was not checked. As a result, methane could build to dangerous levels without anyone knowing. Because Sisco was engaged in roof bolting, potential ignition sources were present. An arc or spark from the act of drilling into the roof or from a defective component of the roof-bolting machine could ignite the methane if it migrated from the face outby. An ignition could have lead to Sisco's serious injury or death, and also could have endangered others on the section.

A potentially explosive methane buildup was reasonably likely to occur. Likelihood must be viewed in the context of all of the conditions that existed in association with the violation—namely, the fact that there was no measurable ventilation in the area of the roof-bolting machine, and the fact that the mine freely liberated methane. Without ventilation, methane was reasonably likely to build and to do so in conjunction with continuing roof bolting activity. A disaster was likely to ensue.

NEGLIGENCE AND UNWARRANTABLE FAILURE

As the section supervisor, it was Smedley's duty to ensure a methane test was conducted at the face. He should have made certain an extendable probe was at or near the roof-bolting machine, not 150 to 200 feet away (Tr. 108). When he checked for methane he should have used that probe. Smedley knew of the propensity of the mine to liberate methane. Nevertheless, he did not properly check, nor make sure anyone else did. In failing to ensure the methane check was properly conducted Smedley, and through Smedley, GCI, was highly negligent.

Moreover, when viewed in the context of other conditions that existed on the section, the failure to ensure a methane test was conducted at the face represented aggravated conduct. The mine's tendency to liberate methane and Sisco's roof bolting activities should have alerted Smedley to be especially diligent about methane testing because taken together the conditions created the potential for a very serious accident. Despite Smedley's assertion that Sisco should have tested for methane (Tr. 710), it was Smedley, not Sisco, who ultimately was responsible, and there is no indication Smedley reacted nor made the least effort to ensure compliance. For these reasons I conclude that Smedley, and through Smedley, GCI, unwarrantably failed to comply with section 75.362(d)(2).

SMEDLEY'S §110(c) LIABILITY

Smedley, the supervisor and agent of GCI, failed to ensure the test was conducted properly despite the fact he knew the mine had a propensity to liberate methane, and despite the fact he knew Sisco was engaging in roof bolting. His failure to make sure the test was properly conducted, combined with what he knew about the mine and what he knew or should have known about the conditions on the section, means that his negligence was more than ordinary and that he was responsible for a knowing violation of section 75.362(d)(2).

CITATION/ORDER NO.	DATE	30 C.F.R.§
4715083	11/3/98	75.342(c)

The citation, which was issued pursuant to section 104(d) of the Act, states in part:

> The methane monitor on the 2G Long Airdox mining machine was not being maintained as required. The monitor was tested with a 2.5 % known calibration mixture of methane and it would not go up to 1 %. The wet coal fines were cleaned from the sensor head and the methane applied and it went up to 1.3% and the machine did not de-energize automatically as required. There was 1.1 to 1.4% CH4 tested with a calibrated hand-held methanometer when

> the machine had been cutting in the No. 3 entry and right cross cut and was just backing out when observed. The methane monitor had not been calibrated since 09/22/98 (Gov. Exh. 3).

Section 75.342(c) requires a methane monitor on a continuous miner to "automatically deenergize electric equipment . . . when — (1) The methane concentration at any methane monitor reaches 2.0 percent; or (2) The monitor is not operating properly". Marietti maintained the monitor on the continuous miner was not operating properly. Methane could not enter the monitor's sensors because "the sensor head [of the monitor] was plugged with coal" (Tr. 114). Moreover, when the sensor head was unplugged and a known 2.5% concentration of methane was applied to the sensor, the monitor showed a concentration of 1.3% and the continuous miner did not shut down (*Id.*).

Hill, the continuous miner operator, had backed the machine out of the right cross cut (Tr. 134). Hill told Marietti that a rock had hit the monitor when the machine was making a cut (Tr. 114). Marietti estimated this occurred 20 to 25 minutes before Hill backed out of the cross cut (*Id.*, Tr. 115). He speculated that the monitor was "smashed down" into accumulated coal and that the monitor's methane sensors became clogged (*Id.*).

In Marietti's view, the condition of the monitor was hazardous to all of the miners on the section. As the continuous miner cut coal, methane undoubtedly was liberated. Because the machine did not deenergize automatically as required when methane reached 2.0%, the machine's electrical components presented an ignition source for the methane. The combination could have lead to an explosion causing serious injuries, even deaths (Tr. 115-117). Further, as mining continued Marietti believed an explosion was highly likely (Tr. 116).[7]

While Marietti agreed that Hill might not have known the methane monitor was damaged when it first was struck by the rock (Tr. 129-130), he believed that both Hill and Smedley subsequently knew. Hill told Marietti that he discussed the condition of the monitor with Smedley; that they determined the monitor "wasn't a problem"; and that Hill should continue mining (Tr. 117, 120). Marietti testified he asked Smedley about this conversation and that Smedley replied he "didn't know anything about it" (*Id.*, 128). However, Marietti believed Hill and accepted as fact that Smedley had told Hill "to go on mining." (Tr. 120-121, 127-128). In Marietti's view, Smedley should have had Hill shut down the continuous miner and repair the monitor (Tr. 120).

For his part, Smedley maintained that he knew nothing about the condition of the methane

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[7] Marietti also found that the explosive hazard combined with other conditions affecting the continuous miner created an imminent danger and he issued an order withdrawing the continuous miner from service (Gov. Exh. 27; Tr. 122, 124). The other conditions affecting the miner were permissibility violations; accumulations of combustible materials "all over the machine" (Tr. 129); and the fact that the fire suppression system on the miner was not operating at full capacity (Tr. 121, 124-125). GCI did not contest the order.

monitor until after the alleged violation was cited (Tr. 712). The monitor is located on the right side of the continuous miner. It is not readily visible to the continuous miner operator (Tr. 714). Because of its out-of-the-way location, Hill normally would not find the damaged methane monitor until after he finished cutting and was moving to a new location (Tr. 715).

Vetter believed that Smedley should be held responsible for a "knowing" violation of the Act. Vetter based his opinion on Marietti's notes which indicated Hill told Marietti that he and Smedley discussed the fact that the monitor had been damaged but that Smedley said to go ahead and operate the continuous miner (Tr. 329). In addition, Vetter believed Smedley should have seen the damaged monitor because it was dangling by its wires (*Id.*).

THE VIOLATION

Marietti's testimony regarding the condition in which he found the methane monitor was unrebutted. The methane monitor was clogged with coal fines. Methane could not fully register at the sensor heads (Tr. 114). If the methane content of the atmosphere could not register accurately, then the monitor could not "automatically deenergize . . . when . . . [t]he methane content reache[d] 2.0 percent", and the monitor was "not operating properly". The condition violated section 75.342(c).

GRAVITY AND S&S

The violation was both very serious and S&S. As has been frequently noted, the mine tended freely to liberate methane. In fact, a test was conducted and it was found that Hill had been cutting coal in a methane concentration of 1.1 to 1.4 percent (Gov. Exh. 2; Tr. 112). While this methane level was not itself hazardous, methane liberation could have continued in the presence of the energized continuous miner. Had an ignition occurred, it easily could have seriously injured or killed Hill and perhaps others on the section.

Moreover, there was a reasonable likelihood of an accident. The possibility of an explosion caused by the failure to deenergize the monitor must be viewed in the context of all of the conditions that existed in association with the violation. Methane liberation was common and could be expected to continue. Moreover, there was an *actual* potential ignition source present in that permissibility violations on the continuous miner would have allowed accumulated methane to seep into the continuous miner's electrical components where an arc or spark could have ignited the gas (Gov. Exh. 27 at 2).

NEGLIGENCE AND UNWARRANTABLE FAILURE

It was Smedley's duty as the section supervisor to make sure the methane monitor was

operating properly. Smedley knew that the mine had a propensity to liberate methane and that Hill was mining in the cross cut. The continuous miner had to be examined before it began operating. Smedley, therefore, knew or should have known that half of the water sprays of the continuous miner's fire suppression system were not working and that the continuous miner contained permissibility violations (Gov. Exh. 27). These conditions made it all the more important that the machine's methane monitor function properly when coal was cut. Smedley's failure to detect and correct the condition of the monitor reflected his failure to exercise the care required by the circumstances and established his and GCI's negligence.

However, Smedley and the company did not unwarrantably failed to comply with section 75.342(c). The Secretary's contention that their negligence was more than ordinary rests upon what Marietti recalled he was told by Hill — that Hill advised Smedley of the condition of the monitor and that Smedley told him to continue mining (Tr. 117, 120).

Hill was not called to testify by the Secretary. This left Smedley in the position of refuting what Hill supposedly told Marietti by cross examining Marietti. The Secretary, who bore the burden of proof, offered no explanation as to why Hill did not appear as a witness. Smedley contended that prior to the citation of the violation he did not know anything about a conversation with Hill regarding the condition of the monitor (Tr. 128), and that he learned about and discussed with Hill the condition of the monitor only after the citation of the violation (Tr. 712). This was neither inherently improbable nor unbelievable. The monitor was not located in an area of the continuous miner where it was readily visible. The rock damaged the monitor only 20 to 25 minutes before Marietti observed the violation (Tr. 114-115). If Hill did not learn about the condition of the monitor until after the violation was cited, there is no reason Smedley should have told Hill to continue mining despite the monitor's inability to function properly. Under these circumstances I cannot find the out-of-court statement of non-witness Hill established that Smedley exhibited an inexcusable and unjustifiable lack of care. In other words, on the basis of the existing record, I cannot find that Smedley's lack of care rose to the level of unwarrantable failure.

SMEDLEY'S 110(C) LIABILITY

As has been previously noted section 110(c) liability is predicated on aggravated conduct constituting more than ordinary negligence (*Target Industries, Inc.*, 23 FMSHRC at 945). Here, that necessary predicate does not exist.

CITATION/ORDER NO.	DATE	30 C.F.R.§
4896090	11/3/98	75.220(a)(1)

Citation No. 4896090, which was issued pursuant to section 104(d) of the Act, states in pertinent part:

The approved roof control plan dated Mar[ch] 8, [19]96 is not

> being followed. [A d]eep cut measuring approximately 30 feet. . . is present in the No. 3 entry inby [cross]cut 32 off West mains. The roof control plan states on page 12 that only 20 feet is maximum depth . . . [The f]oreman was present on section and should have known that deep cuts were being taken (Gov. Exh. 4).

On November 3, Marietti and Simmons arrived in the No. 3 entry around 9:30 p.m. At that time advance mining was taking place (Tr. 163). Marietti and Simmons noticed a large area of unsupported roof that appeared to exceed 20-feet in length (Tr. 138-139, 148). The approved roof control plan limited a cut to 20-feet. Marietti and Simmons believed that the unsupported area was cut near the beginning of Smedley's shift (Tr. 148). Smedley was not present in the No. 3 entry when the inspectors first arrived. He appeared shortly thereafter (Tr. 156).

At first, Marietti and Simmons tried to measure the cut by throwing a tape measure into the unsupported area. The measurements were inaccurate, so the inspectors waited until the roof was bolted and they measured again (Tr. 139). They found that the cut measured approximately 30-feet in length (Tr. 146-147; Gov. Exh. 12). Simmons issued Citation No. 4896090 to Smedley, charging GCI with violating the roof control plan (Tr. 160-161, 421-422; Gov. Exh. 18 at 35).

Marietti spoke with the continuous miner operator, Hill, who confirmed that he had in fact been making 30-foot cuts (Tr. 159, *see also* Tr. 347). Marietti remembered Hill saying that Smedley had been in the No. 3 entry "most of the time they were making the cuts" (*Id.*). Hill said that Smedley left the entry just before Marietti and Simmons arrived (*Id.*, Tr. 167).

Marietti understood that prior to November 3, GCI requested MSHA to approve 30-foot cuts during advanced mining, but that MSHA authorized them only for a limited time and only when MSHA personnel were present (Tr 140-145, 170; Gov. Exh. 18 at 1, Gov. Exh. 28). Before MSHA would give the kind of approval GCI sought—unrestricted approval—the agency wanted to evaluate the mine's ventilation plan and be certain there was adequate ventilation to keep extended cut areas free of methane (Tr. 146-147).[8]

It was obvious to Marietti that extended cuts might lead to ventilation that was inadequate to dilute and render harmless methane (147-148). As Marietti stated, "[T]he longer the cut[,] the stronger the air current you need to ventilate [the] cut" (Tr. 148). It also was obvious to Marietti that extended cuts created a roof-fall hazard. The more unsupported roof, the more likely the roof was to collapse. If the roof fell, it would endanger Hill and the fall could carry over the last

[8] Marietti noted that the agency was concerned because in the past it had found problems with the ability of the ventilation system to keep 30-foot cuts methane free. During one MSHA supervised test up to 5% methane was recorded, and in all tests at least 1% methane was found (Tr. 172).

inby row of roof bolts endangering miners working outby (Tr. 148). All of the miners reasonably could be expected to suffer concussions, broken bones, internal injuries, or death (Tr. 150).

As supervisor, Smedley was required to conduct examinations of the area. To Marietti the extended cut was "very obvious" and he thought Smedley should have observed it during his examinations (Tr. 151-152). Marietti maintained he asked Smedley why the continuous miner operator was taking 30-foot cuts, but Smedley did not reply (Tr. 153). To Marietti "it was obvious that . . . Smedley knew or should have known that [the] 30-foot cuts were . . . made" (Tr. 158).

Marietti further concluded that Smedley and Ball shared responsibility. Although Ball claimed he had not been in the area of the cut and was unaware of it until he joined the inspectors (Tr. 659), Marietti did not consider Ball's actual knowledge to be determinative. Rather, he focused on Ball's responsibilities. Marietti believed that Ball was both the mine's safety coordinator and its functioning superintendent. Marietti noted Ball was listed on the mine's legal identity report as a "person . . . in Charge and Health and Safety" (Tr. 202-203, 485; Resp. Exh. 1). Further, Marietti knew that in April 1998, Ball sent GCI's ventilation plan to MSHA for approval, which indicated to Marietti that Ball was acting on behalf of mine management (Tr. 213; Gov. Exh. 17 at 2). Ball was responsible for making certain everything possible was done to encourage compliance with the approved plan.

Vetter agreed with Marietti about Smedley's and Ball's responsibilities for the extended cut. Vetter testified that Sisco told him Smedley was in the area of the cut. A mobile bridge conveyor operator also said that Smedley went to the area while mining was taking place (Tr. 343-345), and this was reiterated by a second mobile bridge conveyor operator (Tr. 347). Finally, although Hill initially told Vetter he could not recall Smedley being in the area, during a subsequent interview Hill said if he told Marietti and Simmons that Smedley was in the area, then Smedley was there (Tr. 348).

Vetter thought that when determining whether an individual was responsible it was important to examine the person's actual and perceived authority (Tr. 449-451). Like Marietti, Vetter believed that Ball had authority to act on behalf of GCI. Vetter interviewed rank-and-file miners who told Vetter that Ball "had the most day-to-day authority over the [mine]" (Tr. 403). In fact, Smedley and Hill told him that they reported to Ball (Tr. 404, *see also* Tr. 460).

In addition, Keith Springer, a mobile bridge conveyor operator who worked on Smedley's crew, told Vetter that approximately two weeks before the inspection, MSHA and the company conducted a test to determine whether roof and ventilation conditions would permit 30-foot cuts (Tr. 397, 416; *see* Gov. Exh. 16 at 1). The test extended over several days. While it was ongoing MSHA allowed 30-foot cuts to be made at the mine, but restricted them to a specific test area and permission to make the cuts terminated with the test (Tr. 417, 424). Springer told Vetter that despite the fact that the test ended without approval, Ball told the miners they could continue making 30-foot cuts (Tr. 397-398, 416) and that it became "normal rather than abnormal" to

make them (Tr. 399).

The practice of routinely making 30-foot cuts also was described by Jeff Tripp, Springer's brother-in-law and a mobile bridge conveyor operator. He told Vetter that "it was general knowledge around the mine, and supported by management including . . . Smedley and . . . Ball, that a 30-foot cut plan was approved" (Tr. 401).

Neither Springer nor Tripp appeared as a witnesses for the Secretary (Tr. 439, 400). Both are sons-in-law of Brown. Counsel for GCI maintained that their statements were "possibly biased [against] . . .Ball" (Tr. 681). Vetter recognized Springer and Tripp might have an interest in making Ball appear responsible (Tr. 442, 455) in that not only are they related to Brown, but they knew that Ball terminated Brown's employment with GCI (Tr. 677, 679). However, Vetter noted that disinterested miners also told him much the same things as Springer and Tripp. For example, John Bear, a mobile bridge conveyor operator, said that Ball told "all of us that the [roof control] plan had been approved . . . [and] for us to start making 30-foot cuts" (Tr. 412) and that after this, it became "normal" to make 30-foot cuts (Tr. 413). Vetter also testified that Darrell Cash, the afternoon continuous miner day-shift operator, said that Ball told the miners that approval of 30-foot cuts was "in the mail" and that miners should "start taking the 30-foot cuts" (Tr. 414). In so doing they should "experiment with the top and see if it . . . [would] hold up" (*Id.*). Finally, John Davis, a roof bolter, said that Ball "told everybody 30-foot cuts were approved and to take the cuts" (Tr. 415).

THE VIOLATION

Section 75.220(a)(1) requires each mine operator to "develop and follow a[n approved] roof control plan". The roof control plan that was in effect on November 3, 1998, limited "cuts into the coal face . . . a maximum distance of 20-feet inby the last full row of permanent roof supports" (Gov. Exh. 18 at 35). The citation charges GCI with taking a cut of 30-feet in the No. 3 entry (Gov. Exh. 4). Marietti's testimony that the inspectors measured the cut after the unsupported area was roof bolted and that they found the area to be 30-feet in length was not disputed by GCI (Tr. 146-147; Gov. Exh. 12). The testimony confirms that the violation existed as charged.

GRAVITY AND S&S

The violation was both very serious and S&S. Marietti was articulate regarding the dual hazards posed by the violation. Advancing the face beyond the approved limit of 20 feet could mean that the ventilation would be inadequate to carry away methane liberated while the coal was

cut and that methane could accumulate rapidly to dangerous levels (Tr. 147-148). Also, extending the cut to 30-feet could mean the area of exposed, unsupported roof "wouldn't support itself" (Tr. 147). If the roof fell, then serious injury or death was likely to result (Tr. 150). Both of the dangers were actual. Both of them endangered Hill and other miners on the section. Either of the hazards was enough to make the violation very serious.

Management personnel knew that effective ventilation and roof control were essential to safety. They did not know the effects of extending by 10-feet the normal and approved cut. By foregoing approved ventilation and roof control to gambling on the unknown, the personnel

engaged in a practice that was so potentially risky, its result must be found to have been reasonably likely to contribute to an injury causing methane ignition and/or roof-fall, and this was especially true in the Pollyanna No. 8 Mine, where methane liberation was common.

NEGLIGENCE AND UNWARRANTABLE FAILURE

GCI's efforts to obtain approval from MSHA to extend cuts to 30-feet provide a telling backdrop to the violation. Since at least August 1998, GCI had tried without success to get approval for such cuts during advance mining (Tr. 543-544). Less than two weeks before November 3, MSHA's on-site investigation of GCI's extended cut proposal ended without such approval (Tr. 417, 424). It is simply inconceivable that GCI was under the impression that taking extended cuts during advance mining was permissible.

Therefore, as mining advanced, GCI should have been alert to the need to take only 20-foot cuts. The evidence establishes that GCI was far from alert. The extended cut at the face in the No. 3 entry and the other extended cuts that existed on the section (and which will be discussed subsequently) easily support the inference that GCI was not exercising the care required to ensure compliance with its roof control plan. Rather, when it came to extended cuts, GCI was highly negligent.

The evidence also establishes that GCI, through Smedley, unwarrantable failed to comply with section 75.220(a)(1). While there is no way to know from the record exactly when the violative cut was made, vis-a-vis Smedley's on-shift examination (*see* e.g. Tr. 184), the testimony is more than adequate to conclude that Smedley either was aware of the cited extended cut and ignored it or was more than ordinarily negligent in failing to recognize the cut.

Because it is logical and usual for a section supervisor to visit an area that is being mined under his direction and to do so repeatedly while mining was taking place, I credit the statements the miners made to Marietti and Vetter that Smedley was present when most of the cuts were made and that he left just before the inspectors arrived (Tr. 159-157, 167). The reports of his presence are fully consistent with his duties and are entitled to belief. It follows, therefore, that Smedley almost certainly was present when the subject cited cut was made or right after it was

made. As a result, Smedley either knew or should have known of the cut (Tr. 167). In addition, Smedley either knew or should have known that the extended cut was not approved. He was the section supervisor and it was his responsibility to be aware of the provisions of the roof control plan. Either by purposeful inaction or by seriously neglectful inattention, he allowed a violation that posed a very real threat of injury or death to Hill. His conduct, and through him GCI's conduct, was unwarrantable.

I also conclude that Ball was more than ordinarily negligent. Five different miners, three of whom had no apparent interest in discrediting Ball, told Vetter that Ball misinformed them that a 30-foot cut plan had been approved and that "they should continue making the 30-foot cuts" (Tr. 398, *see also* Tr. 397, 399, 401, 412-416). Based on these reported consistent statements—especially those of the apparently disinterested miners—it is reasonable to conclude that Ball mislead miners into thinking the practice was permissible, and that he encouraged them to make the cuts (Tr. 399-400). Although the record does not establish that Ball knew of the cited extended cut until it was pointed out to him by the inspectors— this is not critical. Ball's culpability stems from the fact that the violation arose from misinformation he provided miners about the roof control plan and from his encouragement of extended cuts. Ball's actions, and therefore GCI's, were more than ordinarily negligent.

SMEDLEY'S AND BALL'S 110(C) LIABILITY

The Secretary charges Smedley and Ball with a knowing violation of section 75.220(a)(1). To find that the Secretary has proven her case, I must find that Smedley and Ball knowingly authorized, ordered or carried out the extended cut at the face of the No. 3 entry. Smedley was the supervisor, and he was present on the section either while or right after the cut was made. He saw or should have seen the cut area. Clearly, he was "in a position to protect employee safety" (*Kenney Richardson*, 3 FMSHRC at 16). Despite this, he took no action to prevent the cut nor to support the roof afterwards even though he had "knowledge or reason to know of the [extended cut]" (*Id.*). His failure was unaccountable and inexcusable, and I conclude that Smedley is liable under section 110(c).

I also find that Ball is liable. He too was in a position to protect miners' safety. The testimony established that the miners looked to him as the person with the most "day-to-day authority" over the mine (Tr. 403). The testimony also established that he mislead miners regarding MSHA's approval of the extended cut provision and that he encouraged the practice of taking such cuts. The extended cut in the No. 3 entry was a logical result of Ball's knowing violation of section 75.220(a)(1).

CITATION/ORDER NO.	DATE	30 C.F.R.§
4896091	11/3/98	75.220(a)(1)

Order No. 4896091, which was issued pursuant to section 104(d) of the Act, states in

relevant part:

> The approved roof control plan dated Mar[ch] 8, [19]98 is not being followed. A deep cut measuring approximately 30 feet past the last roof bolts [is located] in the No. 3 right [cross]cut . . . . Page 12 of roof control plan and page 6 of ventilation plan states that only 20 feet maximum cuts are to be taken. [The f]oreman was present on . . . [the] section and should have known that deep cuts were being taken (Gov. Exh. 5).

Marietti stated that the order was issued because a 30-foot cut existed in the right cross cut off of the No. 3 entry. When the inspectors arrived the continuous miner was backing out of the cross cut and down the entry (Tr. 186; Gov. Exh. 12). As with the previous citation, Simmons and Marietti confirmed the cut was 30-feet long by measuring it (Tr. 186).

Marietti testified that the extended cut violated the roof control plan and created a potentially unstable roof. A roof-fall could endanger the continuous miner operator, and because it could pull down supported as well as unsupported areas, it also could endanger miners working outby the cross cut (Tr. 187). In addition, there was danger that the ventilation in the cross cut would be inadequate to clear away methane (*Id.*). For the same reasons as stated regarding the prior citation, Marietti believed that the violation created hazards that were reasonably likely to cause serious injury or death. Therefore, he found that the violation was S&S (Tr. 187-188).

In Marietti's view, the violation was the result of high negligence on GCI's part (Tr. 188). Marietti was told that Smedley was present in the entry just prior to Marietti's arrival and while the continuous miner was cutting. Marietti believed that by looking at the roof, Smedley easily could have seen the extended cut (Tr. 188, 190). Even if he did not look at the roof he could have known the cut exceeded 20-feet by observing where the continuous miner's "20-foot mark" was located in relation to the supported roof (*Id.*).

As with the prior citation the Secretary charged both Smedley and Ball with personal liability. Vetter testified that both should be held liable for the same reasons he stated previously (Tr. 356, 409). Also, as before, Ball maintained he was unaware of the extended cut in the right cross cut until he reached the section on the evening of November 3, when Simmons "showed me some of the worst things that . . . [the inspectors] had found" (Tr. 661).

THE VIOLATION

The citation charges, and the testimony confirms, a cut in the No. 3 right cross cut of 30-feet beyond the last row of roof supports (Gov. Exh. 5; Tr. 186). The cut violated the approved roof control plan (Gov. Exh. 18 at 35), and I find the violation existed as charged.

GRAVITY AND S&S

Testimony regarding the gravity and the nature of the violation tracked that for the previous violation. For the same reasons I find the violation was both very serious and S&S.

NEGLIGENCE AND UNWARRANTABLE FAILURE

Further, I conclude the cut in the right cross cut was due to GCI's high negligence. The conclusion is based upon my view that Smedley and GCI were well aware that extended cuts were not approved but that they did nothing to prevent the taking of the cut in the right cross cut nor to support the area after it was cut. I have credited the hearsay statements of the miners regarding Smedley's presence in the entry during the time the extended cuts -- including the cut at issue -- were taken. As I have noted, it was reasonable and logical for a person in his position to be present during such times. Also, Marietti's testimony was not rebutted that even if Smedley did not look at the roof, he should have known that Hill was in the process of taking an extended cut by observing the "20-feet" mark on the continuous miner (Tr. 188-190). Thus, Smedley either knew or should have known of the cited cut. As the supervisor on the scene Smedley was responsible for understanding the requirements of the plan and for ensuring they were carried out. Smedley either should have stopped the cut or should have had the cut area supported. He totally failed in this regard.

In addition, Smedley's unaccountable failure to act in the presence of the very serious hazard created by the violation was inexcusable and aggravated. The inspector correctly found the violation was due to Smedley's, and thus GCI's, unwarrantable failure.

GCI's unwarrantable failure also was the result of Ball's more than ordinary negligence. He was involved in GCI's attempt to have 30-foot cuts approved. He knew such cuts were not approved. Nevertheless, the testimony supports finding he encouraged miners to believe the practice was permissible. Therefore, I find that the violation was the direct result of the misinformation he provided and of his purposeful lack of care.

SMEDLEY'S AND BALL'S 110(C) LIABILITY

For the same reasons as stated regarding Citation No. 4896090, I also conclude that Smedley and Ball are liable under section 110(c).

CITATION/ORDER NO.	DATE	30 C.F.R.§
4896094	11/3/98	75.220(a)(1)

Order No. 4896094, which was issued pursuant to section 104(d) of the Act, states in part:

> The approved roof control plan dated Mar[ch] 8, [19]98 is not being complied with on the 001-1 MMU. A deep cut measuring 30 feet has been taken in [cross] cut 31 between [the] No. 5 and [No.] 6 entry. . . . [The f]oreman was present on 001-0 MMU and should have known that deep cuts were being taken (Gov. Exh. 6).

Marietti testified that he and Simmons also observed a cross cut that had been driven through the No. 5 entry to connect with a corresponding cross cut in the No. 6 entry (Tr. 193). From looking at the unsupported cut-through area Marietti believed it was cut "in excess of 20-feet" (Tr. 194, 206). Simmons measured the cut-through and found it was 30-feet long. Marietti was not present when the area was measured, but Simmons told Marietti how he made the measurement and recorded its result (Tr. 194).

Marietti explained the exposed, unsupported roof could fall and the fall could override and pull down the bolted roof. The fall could endanger not only the continuous miner operator but also miners working in or traveling through adjacent areas (Tr. 195). The cut-through was open-ended, which Marietti thought made it even more dangerous than the other cited extended cuts (Tr. 196).

Marietti believed the cut-through occurred between 3:00 p.m. and 4:00 p.m. on the shift prior to his arrival (Tr. 197-198, 199). If so, miners had been exposed to its dangers for 6 or 7 hours (Tr. 198-199, 204).

Marietti also believed the cut-through was due to GCI's "high" negligence because the cut area was visually obvious and Smedley either saw it or should have seen it during the examination for his shift (Tr. 199). In addition, Kenneth Clark, the foreman of the prior shift, also should have been aware of the cut-through since it occurred on his shift (Tr. 200-202).

Ball testified that he first saw the cut-through on the evening of November 3 (Tr. 661). Ball agreed the area looked like an extended cut (*Id.*). However, he did not think the condition was readily obvious because the area was dark. The only illumination was light from cap lamps and equipment (Tr. 663).

Cash, the afternoon-shift continuous miner operator, told how the cut-through happened. He first cut the cross cut from the No. 5 entry. He then went to the No. 6 entry and cut the corresponding cross cut. Inadvertently, he cut too far and broke through the wall of coal separating the cross cuts (Tr. 664-666). Clark confirmed Cash's version of the events. However, Clark stated that when he did an examination for the oncoming shift, the cut-through had not yet been made (Tr. 666-668).

With regard to personal liability for the violation, Marietti believed that Ball was culpable. Ball " was working with . . . [MSHA] on . . . plans for the 30-foot cuts. So basically . . . he was

the person responsible and . . . he knew or should have known . . . [whether] they were authorized, and his people should have been trained or informed on that process specifically in that the plan needs to be explained to the miners" (Tr. 206-207).

THE VIOLATION

The citation charges GCI with an extended cut of 30-feet in adjacent cross cuts between the No. 5 and No. 6 entries (Gov. Exh. 5). Thirty feet of unsupported roof was observed by Marietti and Simmons and was measured by Simmons (Tr. 193-194, 196, 206). Even Ball agreed that the cut-through "looked like" an extended cut (Tr. 661). The cut-through violated the roof control plan (Gov. Exh. 18 at 35), and the violation existed as charged.

GRAVITY AND S&S

The violation was both very serious and S&S. Its dangers were even greater than those associated with the previous violations of section 75.220(a)(1). As Marietti persuasively explained, support for the roof was weaker because by joining the cross cuts the continuous miner eliminated one of the roof's main supporting walls (Tr. 196). Further, because the cross cuts were joined, miners in both entries were subject to the possibility of overrides (Tr. 195). While it is true Marietti did not see miners working in the area (Tr. 210), the section was engaged in active mining and it is reasonable to assume that as mining continued, miners would have been working or traveling in the areas of the conjoined cross cuts. Thus, any roof-fall was reasonably likely to cause serious injury or death.

NEGLIGENCE AND UNWARRANTABLE FAILURE

The violation was due to GCI's high negligence. I credit Marietti's opinion that the cut-through occurred on the shift prior to Smedley's (Tr. 197-199). This is what Ball was told by Cash (Tr. 664-666). I agree with Marietti that while there is no way to determine precisely when the cut-through happened, the evidence points to it occurring near the very end of the afternoon shift. Nothing in the record indicates Clark was not being truthful when he stated the cut-through was not present when he conducted the examination for the oncoming shift (Tr. 667).

Since the cut-through occurred near the end of Clark's shift, it was present during Smedley's shift. Even if the cut-through was as difficult to see as Ball maintained (Tr. 663), the other extended cuts made during Smedley's shift should have alerted Smedley to the possibility of extended cuts made prior to his shift. Given the danger to the miners caused by the extended cuts and Smedley's high degree of responsibility for the safety of the miners he supervised, Smedley's failure to detect the unsupported roof represented more than ordinary negligence.

In addition, because Ball mislead miners about MSHA's approval of extended cuts and

because he encouraged the practice, I attribute more than ordinary negligence to Ball, and through Ball to GCI. For the same reasons as stated previously, I conclude the Secretary proved the violation also was the result of Ball's, and thus GCI's, unwarrantable failure.

BALL'S 110(C) LIABILITY

However, I also conclude the Secretary did not prove that Ball knowingly violated section 75.220(a)(1). Unlike the other extended cuts, the cut-through was not the result of a knowingly taken 30-foot cut. Rather, its cause was a mistake by Cash who took two cuts of less than 30-feet and unintentionally joined them creating 30 feet of unsupported roof and the violation (Tr. 664-666). Thus, the violation was not the logical result of Ball misinforming the miners about the 30-foot cut provision and of his encouragement of the practice. In addition, I credit Ball's testimony that he was unaware of the cut-through until it was pointed out by the inspectors (Tr. 659, *see also* Tr. 226).

CITATION/ORDER NO.	DATE	30 C.F.R.§
4896095	11/3/98	75.400

Order No. 4896095, which was issued pursuant to section 104(d), states:

> An excessive accumulation of loose coal, coal fines and coal dust has been allowed to accumulate on the 001-0 mmu beginning at [the] face and extending outby for 3 cross cuts in all entries and connecting cross cuts. The accumulations measured up to 20 inches in depth with a section entry average of approximately 10 in[ches]. The accumulations [were] powder dry in areas, damp and wet in areas. Ignition sources of belt and rollers rubbing against accumulations on the continuous haulage belt [were] present and permissibility violations [were present] on [the] miner. [The] foreman was present on [the] section (Gov. Exh. 7).

Section 75.400 prohibits accumulations of coal dust, loose coal and other combustible materials in active workings and on electric equipment in active workings. Marietta explained that when he and Simmons arrived in the No. 3 entry they observed accumulations of loose coal, coal fines and coal dust in the entry from the last open cross-cut to the belt tail piece. Upon inspection of the entire section, they determined the accumulations existed in all six entries of the section (Tr. 229-230; Gov. Exh. 13). The accumulations were present at the faces of the entries, and they were present in the roadways where equipment was located (Tr. 232). They extended up to 500-feet from the faces (Tr. 228; Gov. Exh. 13). The accumulations ranged in depth from approximately 10- to 20-inches. The accumulations had not been rock dusted (Tr. 236, 238). After the condition was cited, GCI removed the accumulations from the mine, and Marietti

testified Ball told Simmons that 400 tons of the material were removed (Tr. 232, 247).

Marietti feared the accumulations would ignite. Trailing cables from electrical equipment provided potential ignition sources (Tr. 233). He also noted that the continuous miner working on the section was not maintained in permissible condition and that its methane monitor was not working properly (Tr. 234). If methane seeped into the continuous miner's electrical compartments and exploded, it could provide an ignition source for the accumulations (*Id.*). All of the miners working on the section were reasonably likely to be burned, to suffer from smoke inhalation, or worse (Tr. 236-237).

Because of the amount and extent of the accumulations, Marietti believed they had existed from two to four days (Tr. 228). He was sure they had not come into existence during a single shift (Tr. 249, 252, *see also* Tr. 255). He also believed if GCI had cleaned up loose coal and coal dust during each shift's mining cycle, as was required, it could have prevented the accumulations (Tr. 233).

Smedley responded that on November 3, his shift lacked that ability. The scoop had broken down during the previous shift and he and another miner did not repair it until around 7:30 p.m. or 8:00 p.m. (Tr.734). Smedley also implied that much of the accumulated material could have been due to a sudden, recent spillage. The mobile bridge conveyor (MBC) haulage system was new and it had a propensity to "spill a great amount of coal" (Tr. 734-735).

Marietti discounted these possibilities. On November 3, no one mentioned to him that clean up efforts had been hampered or discontinued (Tr. 259). No one mentioned to him that the company was having problems with the MBC (Tr. 256). Indeed, when Marietti asked Smedley about the accumulations, Smedley said nothing (Tr. 239).

In Marietti's view, Smedley was highly negligent in allowing the accumulations to exist. They had been in existence for several days (Tr. 237). Smedley was responsible for examining the area. The results of the pre-shift and on-shift examinations had been recorded and there was no reference in the reports to the accumulations (Tr. 257-258).

In addition, Marietti believed Kenneth Clark, foreman of the afternoon shift, also was "highly" negligent (*Id.*). The accumulations existed on his shift as well. In Marietti's opinion they were so obvious and extensive "any prudent miner" would have known they were there and would have had them cleaned up (Tr. 238).

With regard to personal liability, Marietti and Vetter agreed that Smedley was culpable. Vetter noted that 400 tons of material was taken from the mine to abate the violation (Tr. 382, 385) and that 400 tons was more than sometimes was mined during the course of an entire day (Tr. 357; 360; *see* Gov. Exh. 14). The implication Vetter drew from this was that the accumulations were so large that Smedley simply had to have known of them. Despite his knowledge, he allowed them to continue (Tr. 358, *see also* Tr. 386, 387-388).

Vetter spoke with Smedley about the situation. The only thing Smedley said was that he was training a person on the scoop to do clean up work (Tr. 361). Vetter then spoke with the scoop operator, Todd Brown. He told Vetter that although one of his duties was to clean the section, he never had sufficient time to do it; that either he had to haul supplies; the scoop was inoperable; or the mobile bridge conveyors were constantly running and blocking his way (Tr. 358).

Vetter also thought personal liability extended to Clark. The amount of the accumulations meant that much of the material was present on Clark's shift (Tr. 374-375), and Clark was more than ordinarily negligent in failing to remove it (Tr. 376-378).

THE VIOLATION

In one of its earliest cases, the Commission stated that section 75.400 is violated "when an accumulation of combustible materials exists" (*Old Ben Coal Co.*, 1 FMSHRC 1954, 1956 (December 1979)). GCI did not offer testimony refuting Marietti's description of the accumulations, of their location, and of their extent (Tr. 228-230, 232, 236, 238; Gov. Exh. 13). Ball did not deny that he told Simmons 400 tons of accumulated material were removed in response to the order (Tr. 247). Thus, it is certain that a very large amount of loose coal, coal fines and coal dust accumulated on the section. The accumulated material was combustible, and I find that the violation existed as charged.

GRAVITY AND S&S

The violation was both very serious and S&S. The danger was that an electrical fault or a methane explosion would ignite the coal, coal dust, and coal fines, and that once ignited the fire would spread endangering everyone on the section (Tr. 233). There is no evidence challenging Marietti's testimony in this regard.

Moreover, the presence of potential ignition sources in the immediate vicinity of the combustible material meant that as mining continued, a fire was reasonably likely. Injuries resulting from a fire would have been reasonably serious or worse.

NEGLIGENCE AND UNWARRANTABLE FAILURE

The violation was due to GCI's high negligence and unwarrantable failure. The extent and the amount of accumulated material indicated that the accumulations had existed at least since Clark's shift and perhaps longer (Tr. 357-358, 360). The material was obvious. Clark and Smedley both should have noted the condition during their respective shifts and should have taken steps to eliminate it. Neither did. The evidence fully supports finding that both either knew of the accumulations and ignored them or were irresponsibly oblivious to them.

I do not credit Smedley's testimony that the scoop was inoperable (Tr. 734). This excuse appears to be a post-citation rationalization given the fact that at the time the violation was cited Smedley did not mention the scoop to Marietti. Surely, if the scoop was the reason the accumulations were not cleaned up or were not in the process of being cleaned up, Smedley would have said so. In addition, there is no factual evidence to support Smedley's suggestion that the accumulations were caused by a sudden and recent malfunction of the MBC. As with the scoop, had it been the case, Smedley would have mentioned it.

The extent of the violative condition and the operator's efforts in abating the condition are among the factors that may signal aggravated conduct constituting more than ordinary negligence (*see Consolidation Coal Co.*, 23 FMSHRC 588, 593 (June 2001)). Here the two factors are conclusive. Only indifference or a serious lack of reasonable care can explain why Smedley and Clark, and through them GCI, allowed the cited extensive accumulations of loose coal, coal fines and coal dust to exist and why they were not eliminated or were not in the process of being eliminated at the time they were observed by the inspectors.

SMEDLEY'S AND CLARK'S 110(C) LIABILITY

Smedley and Clark were section supervisors. Both were "in a position to protect employee safety" (*Kenney Richardson*, 3 FMSHRC at 16). Their presence on the section meant that they were aware of the accumulations. By taking no action to clean up the accumulations Smedley and Clark failed to act in a manner commensurate with their responsibilities. Their failure was more than ordinary and in the midst of such an obvious and very serious violation established their knowing violation of section 75.400.

CITATION/ORDER NO.	DATE	30 C.F.R.§
4896096	11/3/98	75.362(a)(1)

Order No. 4896096, which was issued pursuant to section 104(d), states:

> An inadequate onshift has been conducted by the 001-0 section foreman that has been on the section for approximately 7 hours with numerous hazards present with none being addressed consisting of deep cuts, excessive accumulations, ventilation controls not in place, and warning devices not installed for unsupported places. With these conditions present[,] injuries could occur to the 001-1 personnel (Gov. Exh. 8).

Section 75.362(a)(1), requires a certified person to conduct an on-shift examination of each section where anyone is working during the shift. The examination must be made at least once during the shift or more often if necessary for safety. The person conducting the

examination must check for hazardous conditions; test for methane; and determine whether air is moving properly. Section 75.363 requires that any hazardous condition found during the on-shift examination be corrected (*see* Tr. 260-261).

The order was issued by Simmons. Marietti, who was with Simmons and who observed the same conditions that lead Simmons to issue the order, testified that the allegation of an inadequate examination was based on the previously referenced excessive cuts and the accumulations. Marietti described the conditions as creating "obvious" hazards (Tr. 261, *see also* Tr. 266). In addition, Marietti noted the standards required the hazardous conditions to be corrected, and they were not (Tr. 266).

Smedley, was responsible for conducting the on-shift examination for the evening shift. Marietti spoke with Smedley but he could not recall whether Smedley stated he had in fact conducted the examination (Tr. 262, 267). In addition, Marietti could not recall whether there was any record to show Smedley actually conducted it (Tr. 267). However, because of the cited conditions, even if Smedley had conducted the required on-shift examination, it was Marietti's view that the examination was inadequate and therefore a violation of the standard (Tr. 268).

The hazard created by an inadequate on-shift examination was that if the excessive cuts and the accumulations went unreported and uncorrected, then a roof-fall and/or a fire could result. There were energized cables lying in the accumulations and there was energized equipment operating on the section. The cables and the equipment represented potential ignition sources (Tr. 262-263). In addition, the excessive cuts weakened the roof (*Id.*).

Marietti believed that Smedley knew or should have known the hazardous conditions existed. They would have been obvious to any " prudent miner just walking in the area" (Tr. 264). Vetter agreed and thought that Smedley should be held personally liable. He stated that during his investigation, he spoke with two miners who told him they had seen Smedley performing the on-shift examination before the inspectors arrived on the section (Tr. 364-366). The accumulations and excessive cuts existed then and Smedley should have had the conditions corrected.

THE VIOLATION

Smedley confirmed that usually he conducted the on-shift examination, and that he usually did so at the beginning of the shift when he first went on the section. He maintained that when he examined the section on November 3, none of the cited conditions existed (Tr. 737). Given my previous findings regarding the cut-through and the accumulations, I do not credit this assertion.

The cut-through occurred on the afternoon shift and certainly was present at the start of Smedley's shift (Tr. 664-666). The cut-through created a hazardous roof condition that Smedley should have noted when he conducted the on-shift examination. The accumulations also were present on the afternoon shift and thus at the start of Smedley's shift (Tr. 357-358, 360). They

were another hazardous condition that Smedley should have noted.

As stated, section 75.362(a)(1) requires an on-shift examination to be conducted and hazardous conditions to be noted. Section 75.363 requires the hazardous conditions to be corrected immediately. Compliance with section 75.363 is dependent upon compliance with section 75.362(a)(1). If hazardous conditions are not noted then they cannot be corrected, the examination has failed its purpose, and the standard is violated. Thus, a failure to correct hazardous conditions which should have been noted is prima facie evidence of an inadequate on-shift examination and of a violation of section 75.362(a)(1). The existence of the accumulations and the cut-through provide more than enough evidence to establish Smedley's on-shift examination was inadequate and violated section 75.362(a)(1).

GRAVITY AND S&S

The violation was both very serious and S&S. The danger was that miners working on Smedley's crew were subjected to the dual hazards of unsupported roof in the cut-through and of excessive accumulations of loose coal, coal dust, and coal fines throughout the section. Had there been an adequate on-shift examination the hazards would have been noted and corrections would have been initiated. In assessing the gravity and the S&S nature of the violation I must look to the gravity of the hazards created by the conditions, and to the likelihood the hazards would have occurred. The hazards of the cut-through and of the accumulations were found to have been very serious and reasonably likely to occur. The same conclusions are applicable here.[9]

NEGLIGENCE AND UNWARRANTABLE FAILURE

I conclude that the violation was due to GCI's high negligence and unwarrantable failure. The cut-through and the accumulations were present when Smedley conducted his on-shift examination. The conditions were visually obvious. The regulatory requirement of section 75.362, that he travel throughout the section when conducting the examination, means that he should have seen the cut-through and the accumulations. Because mining was continuing on the section he should have realized the conditions created the danger of roof-fall and fire. Had Smedley complied with the spirit as well as the letter of section 75.362(a)(1), he would have taken steps to eliminate the hazards. He did nothing. Given the obvious nature of the conditions and his blatant failure to address them, Smedley, and through Smedley, GCI, was highly negligent in inadequately examining the section.

Moreover, because the conditions were so obvious and the hazards they created were so

[9] In addition, a failure to conduct an adequate on-shift examination is a serious violation in its own right in that the inadequate nature of the examination means that a linchpin of miners' safety is fundamentally flawed.

serious, Smedley's lack of care was aggravated, and through Smedley, GCI unwarrantably failed to comply with section 75.362(a)(1).

SMEDLEY'S 110(C) LIABILITY

I have no doubt that Smedley's inadequate on-shift examination was a "knowing" violation. Smedley was "in a position to protect employee safety and health" and he failed to act even though he "had reason to know of . . . violative condition[s]" (*Kenny Richardson*, 3 FMSHRC at 16). As GCI's agent, Smedley was responsible for recognizing the serious hazards posed by the unsupported roof in the cut-through and by the accumulations. It was incumbent upon him to conduct his examination with care proportionate to the hazards and purpose of the standard. He did not. Either he was oblivious to the hazards or, if he recognized them, he was purposefully neglectful in carrying out his duty to conduct an adequate examination. In either case, his violation of section 75.362(a)(1) subjects him to personal liability.

CITATION/ORDER NO.	DATE	30 C.F.R.§
4367676	12/4/98	75.362(d)(2)

The section 104(d)(1) order 4367676, which was issued pursuant to section 104(d) states in part :

> The required 20 minute methane checks have not been properly made for the *Lee Norse* roof drill . . . located in and roof bolting in the 5 to 6 cross cut of the 001-0MMU. The roof bolter operator stated that the foreman made the methane test at the last row of permanent roof support located about 10 feet from the coal face. The foreman admitted this and stated that he had no excuse. The roof bolter operator was not proved with a methane testing device and no probe was available on the drill. 0.3% methane was detected about 10 [feet] from the face with a hand held methanometer. This mine liberates methane and . . . a [section] 104(d)(1) order was issued previously on this inspection for this type of violation (Gov. Exh. 9).

Section 75.362(d)(2) requires tests for methane at 20-minute intervals during the operation of equipment in working sections and requires they be made at the face from under permanent roof support using an extendable probe or other acceptable means (*see* Tr. 275).

Inspector Gary Jones came to the Pollyanna No. 8 Mine on December 4, to finish the November 3, inspection (Tr. 274). Jones testified that when he arrived, advanced mining had

reached its limits and retreat mining was in progress (Tr. 275).

Jones went underground accompanied by Tim Ball and Steve Brown. After proceeding a short distance Brown left the group and Ball and Jones traveled together (Tr. 281). When they reached the 001 section they walked inby to the area of the No. 5 and No. 6 cross cut. Near the face they observed an entry that had been roof bolted to within 10-feet of the face (Tr. 282). Also, they saw a miner, John Davis, who was operating a roof-bolting machine (Tr. 278; *see* Gov. Exh. 13). Jones asked to see Davis' methanometer. Davis replied he did not have one. Jones believed that section 75.362(d)(1)(iii) required a qualified person to check for methane at the face every 20 minutes and to do so from under supported roof. Jones testified that to test at the face from under supported roof, a person needed an extendable probe. So, Jones asked Davis if there was an extendable probe on the roof-bolting machine. Davis said, "No" (Tr. 277). Jones then asked who was making the required methane checks and how they were being made. Davis responded that the foreman, Clark, was making the checks—that he was checking with a methanometer while standing at the end of the line curtain under the last row of roof bolts (Tr. 276).[10]

Shortly thereafter Clark arrived. Jones asked Clark whether he was testing for methane. Clark replied that he was. Jones then asked Clark where he was conducting the tests, and Clark replied at the last row of roof bolts. Jones inquired whether Clark knew the tests had to be made at the face. According to Jones, Clark replied he did and that he had "no excuse" for not doing so (Tr. 282). Jones maintained that during their conversation Clark never stated that anyone other than he was responsible for making the tests. Nor did Clark ever state that he was testing for methane at the face (Tr. 283). In Jones' view, by failing to test at the face, Clark violated section 75.362(d)(2). Because Clark did not make the test at the proper place and knew it, Jones also believed Clark's, and therefore GCI's negligence was "high". In addition, Jones believed the violation was unwarrantable (Tr.289).

After talking to Clark, Jones tested for methane at the last row of roof bolts and found 0.3%. The explosive range of methane is between 5% and 15% (Tr. 291 Gov. Exh. 9). Jones feared that if tests were not made at the face, methane accumulating there would not be detected. Jones agreed that there was good air movement in the entry, but maintained the air movement did not ensure a safe level of methane at the face. He stated, "If we've got 0.3[%] at the end of [the] ventilation device, Lord only knows what we've got at the face" (Tr. 293). He believed it possible that the continuous miner machine would cut into a methane feeder; that methane would accumulate quickly; and that it would reach an amount where it would migrate to the area where Davis was working (Tr. 295-296).

The electrical components of the roof-bolting machine presented a possible ignition source for any methane (Tr. 283, 295). In addition, the act of installing roof bolts could result in a spark if a roof bolt struck the metal plate used to secure the bolt or struck a rock (Tr. 283-284). Jones

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[10] Vetter testified that during his investigation Davis changed his story. Davis told Vetter that, in fact, Clark was not checking for methane (Tr. 390-391).

believed that the presence of methane in the area; the act of roof bolting; and the electrical components of the roof-bolting machine, made an ignition of methane highly likely (Tr. 287-288). Seven miners were working on the section, and an ignition could have been fatal to them all. Under these circumstances, failing to test properly for methane was a significant and substantial contribution of a mine safety hazard (Tr. 288).

Jones also believed Clark knowingly violated section 75.362(d)(2). In addition to the discussion Jones had with Clark on December 4, Jones based his opinion on the fact that (in his view) Clark should have been especially alert to the requirement to test at the face. The company had been cited for a similar violation on November 3, and Clark should have seen the order in which the previous violation was cited since the order was required to be posted on the mine's bulletin board (Tr. 286).

THE VIOLATION

The company did not dispute that methane tests were not conducted at the face. Jones' testimony fully established both the mandate for the tests and that the mandate was not fulfilled. The violation of section 75.362(d)(2) existed as charged.

GRAVITY AND S&S

The violation was both very serious and S&S. Jones persuasively testified that the failure to check for methane at the face meant that gas could accumulate and migrate from the face toward the roof-bolting machine. A small amount of methane already was present in the atmosphere at the last row of roof bolts, and as Jones stated, "Lord only knows what we've got at the face" (Tr. 293). Moreover, several potential ignition sources were present—sources which Jones described in full (Tr. 283-284,287-288, 295). Additional methane could have accumulated suddenly, without warning. Failing to check for methane at face while mining was ongoing and while miners were present on the section was reasonably likely to have resulted in serious injuries or death to Davis.

NEGLIGENCE AND UNWARRANTABLE FAILURE

The violation was due to GCI's high negligence and unwarrantable failure. The failure to check for methane at the face violated a fundamental safety requirement. Whether Clark actually checked for methane from under the last row of roof bolts, as Davis first told Jones, or whether he did nothing, as Davis later told Vetter — Clark did not conduct the required test at the face. Either he was ignorant of the requirement of section 75.362(d)(2) that he check at the face, or he

purposefully disregarded it. His failure to meet the standard of required care represented more than ordinary negligence on his, and through him, on GCI's part.

CLARK'S SECTION 110(C) LIABILITY

Clark was a supervisor and an agent of GCI. As a supervisor he was in a position to protect miner safety and health and was presumed to know what section 75.362(d)(2) requires. No excuse was offered (to Jones, to Vetter, nor at the hearing) for not having and using an extendable probe to test for methane at the face. Given the hazard posed by a methane accumulation at the face, it was incumbent upon Clark to comply. He did not. As a result he knowingly violated section 75.362(d)(2), and he is liable under section 110(c) of the Act.

THE ABILITY TO CONTINUE IN BUSINESS AND THE SIZE CRITERIA AS APPLIED TO THE INDIVIDUAL RESPONDENTS

In assessing civil penalties against individuals who are liable under section 110(c), the Commission has instructed its judges to "make findings on each of the [statutory penalty] criteria [of section 110(i)] as they apply to individuals" (*Sunny Ridge Mining Co.*, 19 FMSHRC 254, 272 (February 1997)). In *Ambrosia Coal and Construction Co.*, the Commission stated that "the relevant inquiry with respect to the criterion regarding the effect on the operator's ability to continue in business as applied to an individual, is whether the penalty will affect the individual's ability to meet his [or her] financial obligations" and that "[with] respect to the 'size' criterion . . . as applied to an individual, the relevant inquiry is whether the penalty is appropriate in light of the individual's income and net worth" (19 FMSHRC 819, 824 (May 1997)). The Commission further has mandated that its judges "engage in a two-step analysis. . . . First, they must determine a section 110(c) defendant's household financial condition. Second, they then must make findings on the section 110(i) 'size' and 'ability to continue in business' criteria on the basis of the defendant's share of his or her household's net worth, income and expenses" (*Warren R. Steen, employed by Ambrosia Coal & Construction Co.*, 20 FMSHRC 381, 385 (April 1998)). In sum, the judge must make findings based on the "individual's share of the household's income and financial obligations" (*Id.*).

JAMES V. SMEDLEY AND TIM BALL

Neither Smedley nor Ball presented evidence in this regard, and I conclude the size of any civil penalties assessed against them will not affect their abilities to meet their financial obligations.

KENNETH CLARK

Kenneth Clark presented extensive testimony regarding the criteria. He stated that he began working for GCI in May 1996. He stopped working for the company on July 9, 2000, the day GCI ceased mining at Pollyanna No. 8 Mine (Tr. 490-491). On July 9, he held the position of outby foreman, and he was earning approximately $1,100 a week.

Presently, he works at the same mine. It now is operated by Sunrise Coal Company (Sunrise) (Tr. 492). Clark continues to hold the position of outby foreman. Also, he has some management responsibilities (Tr. 508). When he began working for Sunrise, he was earning $937 a week before taxes (Tr. 492). His net earning was approximately $700 (Tr. 494). Currently, his gross salary is $1,145 weekly which is $59,540 annually (Tr. 518).

Clark's wife does not work. In 1998, for federal tax purposes, the couple reported a joint adjusted gross income of $54,866 (Tr. 497; Resp. Exh. 2). The Clarks' only source of income was the salary Clark received from GCI (Tr. 497). In 1999, Clark again was the family's only wage earner. The family's income came from his GCI salary (Tr. 498). In 1999, the couple reported an adjusted gross income of $55,117 (Resp. Exh. 2 at 5). In 2000, they reported an adjusted gross income of $50,019 and, again, their reported income consisted solely of Clark's salary (Tr. 498; Resp. Exh. 2 at 8).

Clark testified that currently he has a savings account with a balance of $10 (Tr. 500). He and his wife do not have a checking account. Clark's unmortgaged home is valued at $75,000 (Tr. 501). Clark values his household possessions at $6,500. He and his wife own a 1987 Isuzu Pup and a 1998 Mercury Sable (Tr. 501-502). The Isuzu is paid for, and the Clarks' owe approximately $12,000 on the Sable (Tr. 502). Clark believes all of his current assets are worth $95,037 (Tr. 503, Resp. Exh.2 at 13).

Clark listed his creditors. He owes $12,686.75, to Ford Credit, with monthly payments of $333.58. He owes a credit card company $4,550 and makes a monthly payment of $116. He owes Sears $4,895.03 and makes a monthly payment of $117. He has two other credit card balances totaling $924.43, on which he is paying $40 a month. He owes $600 to a medical clinic on which he pays $25 a month. He makes insurance payments of $156 a month. Also, he claims gasoline and incidental expenses that total $400 a month (Tr. 504-507). Groceries and household items are indicated by Clark to cost $800 a month (Tr. 509). (This is despite the fact that only he and his wife live in their home (Tr. 519)). Safety clothing costs him approximately $30 a month (Tr. 510). Further, he gives his son approximately $100 a month to help support his son's two children (*Id.*). Electrical bills at his home average $60 a month and water averages $25 a month (Tr. 512). He contributes approximately $80 a month to his church (Tr. 513). Although Clark receives health insurance from Sunrise, the insurance does not cover all prescription drugs, and his wife is under the care of a physician for high blood pressure (Tr. 495, 509).

Clark claims that his total monthly liabilities are approximately $4,885.50, excluding

maintenance on his home and automobiles (Tr. 515-516). He testified that in view of his liabilities, paying the proposed civil penalties would be a financial hardship (Tr. 516). The Secretary states she "does not dispute" Clark's financial evidence (*see* Sec. Br. 55).

It is noteworthy that Clark's income is derived solely from his salary. His current take home pay is $700 a week (Tr. 494). This means that at the end of the month, Clark has expendable income of $2,800. His monthly expenses total approximately $2,127[11]—not including the cost of prescription drugs and maintenance on the Clarks' vehicles and home. It therefore appears that despite Clark's adjusted gross annual income of somewhat more than $50,000, Clark's monthly take home pay is almost totally expended to meet legitimate financial obligations.

The Clarks' main assets are their home and pickup truck, both of which they own outright. The Clarks' have been straightforward about their financial situation. The record contains no indication Clark has tried to hide assets. I do not believe in a situation such as this the Act contemplates an individual having to encumber his or her home or vehicle to meet a large civil penalty obligation.

For this reason, I find that the civil penalties proposed to be assessed against Clark will affect adversely Clark's ability to meet his financial obligations, and I conclude that a marked reduction in the civil penalties assessed is warranted. However, this conclusion does not apply to the penalty assess for the violation of section 75.362 (a)(1) (Order No. 4896096). As counsel for the Secretary notes (and for reasons that escape me) Clark's counsel withdrew Clark's financial evidence as it pertains to this violation (Tr. 745; Sec. Br. 55).

GCI'S ABILITY TO CONTINUE IN BUSINESS

GCI also presented extensive evidence regarding the effect of civil penalties on its ability to continue in business. Jackson was an articulate and forthright witness. He testified that he was privy to all of the company's financial dealings and to its financial condition (Tr. 571). As has been noted, Jackson testified about GCI's formation and Heller's original loan to GCI of $13.5 million (Tr. 572-573). According to Jackson, by the second quarter of 1997, it became apparent that GCI would not be able to meet the principal and interest payments on the loan (Tr. 573). Jackson described Heller officials as "very, very upset" (*Id.*).

GCI has remained behind on the loan, and Heller can foreclose at any time (Tr. 584). As a result, the company's continued existence is subject to Heller's day-to-day forbearance (Tr. 576). Heller holds a first lien position on all the assets of GCI inclusive of its stock. It also holds a

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[11] Clark's testimony that monthly expenses for food and household items average $800 at first glance seems excessive, but given the fact that his two grandchildren, for whom he provides voluntary support, regularly and frequently visit. I believe it is not so far outside the realm of possibility to be discounted.

security interest in all assets, including all of GCI's revenue and contracts (Tr. 573-574). Heller's lean position means that it has an initial right to all of the remaining money and assets of GCI, should GCI default (Tr. 574). In the meantime, interest is accruing on the loan (Resp. Exh. 10).

Prior to January 1998, when Jackson took over as president of GCI, the company had what Jackson described as "substantial loses" (Tr. 584). When Jackson became president, Jackson hired the accounting firm, Arthur Anderson, to audit the company's financial situation. Anderson reported that the book value of the company's assets was between $8 and $9 million (Tr. 575). At that time, the principal amount due on the loan was $13.5 million (*Id.*). Since 1998, GCI has continued to loose money.

Heller receives all of GCI's revenues. It retains approximately .5% of the monies in an escrow account. It sends the balance back to GCI to pay the company's obligations (Tr. 620-621). Although GCI's accounts payable have grown, the company thus far has been able to meet its payroll (Tr. 585, 613).

In July 2000, the company ceased active mining and went from employing approximately 50 miners to employing between 12 and 15 (Tr. 584-585). The employees are primarily involved in reclamation work to satisfy the company's $1.5 to $1.8 million reclamation liability. Because Heller is accountable for the liability should GCI declare bankruptcy, it is in Heller's current interest to keep GCI viable. The money passed back to GCI from Heller has allowed GCI to pay those creditors who are absolutely necessary to keep the company in business (Tr. 586. According to Jackson, paying creditors continues to be a "struggle" (Tr. 597).

As of February 2001, GCI has liabilities of $19,796,593.80 (Resp Exh. 8 at 1; Tr. 596). Of this amount, $14, 078,754.88, is the long term debt owed to Heller (*Id.*). The company has assets of $8,755,500.07 (Resp. Exh. 8 at 1, 596). The company's cash comes from accounts receivable (Tr. 596-597). Excluding the long-term debt owed to Heller, the company has current cash of $112,000 to $113,000 to pay its liabilities (Tr. 599). The current total value of GCI to its stockholders is a negative $12,239,036.53 (Tr. 606).

GCI no longer is involved in active mining (Tr. 580-581). However, GCI still has contracts to provide coal, which it does through leasing its coal rights to other operators. For example, the Pollyanna No. 8 Mine is operated by Sunrise (Tr. 581-582) (Tr. 581). GCI has no present plans to mine actively and could not do so anyway because under its lease agreements the contract operators have the exclusive right to mine (Tr. 610-611, 616). The income GCI makes from its leases was described by Jackson as "very minimal" (Tr. 583).

Jackson, who has declined a salary in order to aid the company, was of the opinion that the company can not pay the civil penalties assessed in these cases without foregoing payments to its debtors (Tr. 606-608). He stated that with its current debt load, it will be some time in the future before GCI has a positive cash flow (Tr. 608). In addition, the company is negotiating with the Internal Revenue Service to make payment arrangements for its existing excise and payroll tax

debts (Tr. 627, 630). In its 1999 federal tax corporate return, the company reported a loss of $4,113,778 (Resp. Exh. 11 at 2).[12] However, Jackson agreed that he could request Heller to approve allocation of some of the company's funds to pay civil penalties (Tr. 614-615).

Jackson's testimony and the documentary evidence submitted by GCI establish that the company's position is precarious. Basically, it continues to operate at the sufferance of Heller. The more obligations the company accumulates, the less likely it is that income will be present to pay the expenses necessary for it to remain viable and, after its lease arrangements expire, to return to active mining. In addition, there is the ever present danger that the company's debt load will become too large for Heller to tolerate, at which point GCI's remaining assets will be sold and the company will cease to exist. Since the company's present assets do not increase in value, any additional debt brings the company closer to that day.

For these reasons, I agree with Jackson that imposition of the proposed assessments will adversely affect GCI's ability to continue in business. I conclude that a substantial reduction in what I otherwise would assess is warranted.

GOOD FAITH ABATEMENT

GCI exhibited good faith in abating all of the violations in a timely fashion. As Marietti stated, the company "systematically [took] care of the violations" (Tr. 155).

HISTORY OF PREVIOUS VIOLATIONS

The Secretary offered into evidence a printout of the violations cited at the Pollyanna No. 8 Mine between December 4, 1996 and December 3, 1998 (Gov. Exh. 19). The printout is accurate (*see* Stip. 8). It lists a total of 384 violations in the two year period (*Id.* at 10). This is a large history.

CIVIL PENALTY ASSESSMENTS

A. DOCKET NO. CENT 1999-178, ETC.

In assessing civil penalties the Act mandates that I consider all of the criteria enumerated

[12] The 1999 return is the last year GCI filed federal taxes. The company received an extension on filing its year 2000 corporate return (Tr. 631).

in section 110(i)(30 U.S.C. §820(i)). With regard to the violations in Docket No. CENT 1999-178 that are associated with the section 110(c) proceedings and with regard to the same violations that are alleged in the individual civil penalty proceedings — Docket Nos. CENT 2000-391, CENT 2000-400, and CENT 2000-401—I have made findings regarding the gravity and negligence of the violations. I also have found that GCI's applicable history of previous violations is large and that the individual respondents have no history of previous violations. In addition, I have noted that the company is small in size (Tr. 110-111). Further, I have found that the size of any penalties assessed against Smedley and Ball will not affect their ability to meet their financial obligations but that the size of any penalties assessed against Clark will. I also have found that GCI established the size of any penalties assessed will affect its ability to continue in business.

With regard to the violations in Docket CENT 1999-178, that are not associated with the individual civil penalty proceedings, the parties have stipulated to all of the civil penalty criteria (Joint Stips.) except the effect of any civil penalties assessed on the company's ability to continue in business. The stipulations are incorporated herein by reference. The assessments made for the non-associated violations reflect the parties stipulations as well as my finding that the size of any penalties assessed will affect GCI's continuation in business.

DOCKET NO. CENT 1999-178

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715067	11/3/98	75.370(a)(1)	$10,000	$2,000

The violation was very serious and was due to ordinary negligence.[13] The parties have stipulated and I have found a large history of previous violations (Joint Stip. 1, Stip. 8; Gov. Exh. 19). The violation was abated in timely fashion. Given the large history of previous violations, the small size of the operator, and the effect of penalties in GCI's ability to continue in business, I assess a penalty of $2,000 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715068	1/3/98	75.362(d)(2)	$15,000	$3,000

The violation was very serious and was due to more than ordinary negligence. The

[13] The parties have stipulated that when these violations were cited the operator owed a "high degree of care" and that the gravity of all of the violations in this docket is "high" (Joint Stip. 1). I interpret these stipulations as not inconsistent with my gravity and negligence findings.

violation was abated in a timely fashion. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $3,000 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715083	11/3/98	75.342(c)	$15,000	$2,000

The violation was very serious and was due to ordinary negligence. The violation was abated in a timely fashion. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $2,000 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715084	11/3/98	75.400	$ 9,000	$1,800

The parties stipulated that the violation existed. They also stipulated the violation was timely abated. It is apparent from the stipulations that this was a serious violation and was due to ordinary negligence. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $1,800 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896090	11/3/98	75.220(a)(1)	$2,000	$400

The violation was very serious and was due to more than ordinary negligence. The violation was abated in a timely fashion. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $400 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896091	11/3/98	75.220(a)(1)	$2,000	$400

The violation was very serious and was due to more than ordinary negligence. The violation was abated in a timely fashion. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $400 for this violation.

CITATION/

ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896094	11/3/98	75.220(a)(1)	$2,000	$400

The violation was very serious and was due to more than ordinary negligence. The violation was abated in a timely fashion. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $400 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896095	11/3/98	75.400	$6,000	$1,200

The violation was very serious and was due to more than ordinary negligence. The violation was abated in a timely fashion. Given the large history of previous violations; the small size of the operator; and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $1,200 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896096	11/3/98	75.362(a)(1)	$6,000	$1,200

The violation was very serious and was due to more than ordinary negligence. The violation was abated in a timely fashion. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $1,200 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715069	11/4/98	75.1100-3	$4,500	$900

The parties stipulated that the violation existed. They also stipulated the violation was timely abated. It is apparent from the stipulations that this was a serious violation and was due to ordinary negligence. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $900 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715085	11/4/98	75.512	$15,000	$3,000

The parties stipulated that the violation existed. They also stipulated the violation was timely abated. It is apparent from the stipulations that this was a serious violation and was due to

ordinary negligence. Given the large history of previous violations, the small size of the operator, and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $3,000 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715086	11/4/98	75.503	$9,000	$1,800

The parties stipulated that the violation existed. They also stipulated the violation was timely abated. It is apparent from the stipulations that this was a serious violation and was due to ordinary negligence. Given the large history of previous violations; the small size of the operator; and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $1,800 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3557719	11/5/98	75.360(b)(6)(ii)	$4,000	$800

The parties stipulated that the violation existed. They also stipulated that the violation was timely abated. It is apparent from the stipulations that this was a serious violation and was due to ordinary negligence. Given the large history of previous violations; the small size of the operator; and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $800 for this violation.

ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3557720	11/5/98	75.360(a)(i)	$5,000	$1,000

The parties stipulated that the violation existed. They also stipulated that the violation was timely abated. It is apparent from the stipulations that this was a serious violation and was due to ordinary negligence. Given GCI's large history of previous violations; the small size of the operator; and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $1,000 for this violation.

ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367676	12/4/98	75.362(d)(2)	$15,000	$3,000

The violation was very serious and was due to more than ordinary negligence. The violation was abated in a timely fashion. Given the large history of previous violations; the small size of the operator; and the effect of penalties on GCI's ability to continue in business, I assess a penalty of $3,000 for this violation.

TOTAL:	**$119,500.00**	**$22,900.00**

DOCKET NO. CENT 2000-391

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715067	11/3/98	75.370(a)(1)	$1,800	$0

I have found that Smedley did not knowingly violate section 75.370(a)(1). According, no civil penalty is assessed.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715068	11/3/98	75.362(d)(2)	$3,000	$750

I have found that Smedley knowingly violated section 75.362(d)(2). I also have found that the violation was very serious and was abated in good faith. Smedley presented no evidence that the size of a penalty assessed against him would affect adversely his ability to meet his financial obligations. The parties have stipulated that Smedley has no history of previous knowing violations. Given these factors I assess a civil penalty of $750.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4715083	11/3/98	75.342(c)	$3,000	$0

I have found that Smedley did not knowingly violate section 75.342(c). Accordingly, no civil penalty is assessed.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896090	11/3/98	75.220(a)(1)	$600	$175

I have found that Smedley knowingly violated section 75.220(a)(1). I also have found that the violation was very serious and was abated in good faith. Smedley presented no evidence that the size of a penalty assessed against him would affect adversely his ability to meet his financial obligations. The parties stipulated that Smedley has no history of previous knowing violations. Given these factors I assess a civil penalty of $175.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896091	11/3/98	75.220(a)(1)	$600	$175

I have found that Smedley knowingly violated section 75.220(a)(1). I also have found that the violation was very serious and was abated in good faith. Smedley presented no evidence that size of a penalty assessed against him would affect adversely his ability to meet his financial obligations. The parties have stipulated that Smedley has no history of previous knowing violations. Given these factors I assess a civil penalty of $175.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896095	11/3/98	75.400	$1,000	$250

I have found that Smedley knowingly violated section 75.400. I also have found that the violation was very serious and was abated in good faith. Smedley presented no evidence that size of a penalty assessed against him would affect adversely his ability to meet his financial obligations. The parties have stipulated that Smedley has no history of previous knowing violations. Given these factors I assess a civil penalty of $250.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896096	11/3/98	75.362(a)(1)	$1,000	$250

I have found that Smedley knowingly violated section 75.362(a)(1). I also have found that the violation was very serious and was abated in good faith. Smedley presented no evidence that size of a penalty assessed against him would affect adversely his ability to meet his financial obligations. The parties have stipulated that Smedley has no history of previous knowing violations. Given these factors I assess a civil penalty of $250.

TOTAL:			**$11,000**	**$1,600**

DOCKET NO. CENT 2000-400

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896095	11/3/98	75.400	$1,000	$100

I have found that Clark knowingly violated section 75.400. I also have found that the violation was very serious and was abated in good faith. Clark established that the size of any penalty assessed against him would affect adversely his ability to meet his financial obligations. The parties have stipulated that Clark has no history of previous knowing violations. Given these factors I assess a penalty of $100 for this violation.

ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367676	12/4/98	75.362(d)(2)	$3,000	$800

I have found that Clark knowingly violated section 75.362(d)(2). I also have found that the violation was very serious and was abated in good faith. Clark would have established that the size of any penalty assessed against him would affect adversely his ability to meet his financial obligations, but his counsel withdrew the evidence (Tr. 745). The parties have stipulated that Clark has no history of previous knowing violations. Given these factors I assess a penalty of $800 for this violation.

TOTAL:	**$4,000**	**$900**

DOCKET NO. CENT 2000-401

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896090	11/3/98	75.220(a)(1)	$1,300	$400

I have found that Ball knowingly violated section 75.220(a)(1). I also have found that the violation was very serious and was abated in good faith. Ball presented no evidence that the size of a penalty assessed against him would affect adversely his ability to meet his financial obligations. The parties have stipulated that Ball has no history of previous violations. Given these factors I assess a penalty of $300 for this violation.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896091	11/3/98	75.220(a)(1)	$1,300	$400

I have found that Ball knowingly violated section 75.220(a)(1). I also have found that the violation was very serious and was abated in good faith. Ball presented no evidence that the size of a penalty assessed would affect adversely his ability to meet his financial obligations. The parties have stipulated that Ball has no history of previous violations. Given these factors I assess a civil penalty of $300.

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896094	11/3/98	75.220(a)(1)	$1,300	$0

I have found that Ball did not knowingly violated section 75.220(a)(1). Accordingly, no civil penalty is assess.

TOTAL:	**$3,900**	**$800**

B. DOCKET NOS. CENT 2000-197, ETC.,

The parties stipulated to all of the civil penalty criteria except the effect of any penalties

assessed on GCI's ability to continue in business. I have found that the size of any penalties assessed will affect adversely GCI's ability to continue in business. Given the parties stipulations, which are incorporated by reference, and the finding regarding GCI's ability to continue in business, I assess the following penalties:

CENT 2000-197

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599497	8/18/99	77.1607(p)	$ 55.00	$ 20.00
7599498	8/18/99	77.1605(d)	184.00	70.00
7599499	8/18/99	77.410(c)	184.00	70.00
7599500	8/18/99	77.400(a)	184.00	70.00
7599701	8/18/99	77.1607(i)	196.00	75.00
7599721	9/01/99	77.1605(d)	184.00	
			70.00	
7599722	9/01/99	77.410(c)	184.00	70.00
7599723	9/01/99	77.1605(d)	184.00	
			70.00	
7599724	9/01/99	48.28(a)	264.00	75.00
Total:			$1,619.00	$590.00

CENT 2000-263

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599738	12/01/99	77.404(a)	$ 207.00	$ 75.00
7599739	12/01/99	77.404(a)	207.00	
			75.00	
7599740	12/01/99	77.1605(k)	150.00	55.00
7599743	2/01/00	77.1109(e)(l)	150.00	55.00
7599744	2/01/00	48.29(a)	55.00	20.00
7599745	2/01/00	77.502-2	150.00	55.00
7599746	2/01/00	77.1605(d)	150.00	55.00
7599747	2/01/00	77.404(a)	150.00	55.00
7599748	2/01/00	77.1104	150.00	
			55.00	
7599749	2/01/00	77.1200	55.00	20.00
7599750	2/02/00	77.1605(a)	150.00	55.00
7599751	2/02/00	77.1104	150.00	55.00
7599752	2/02/00	77.1605(a)	150.00	55.00
7599753	2/03/00	77.400(a)	55.00	20.00
7599754	2/03/00	71.501	55.00	20.00
7599755	2/03/00	77.1605(b)	161.00	60.00
7599756	2/03/00	77.1104	150.00	55.00
4367589	2/10/00	77.404(a)	150.00	

			55.00	
	Total:		$ 2,445.00	$895.00

CENT 2000-264

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599737	12/01/99	77.404(a)	$600.00	
			$160.00	
4367803	3/27/00	77.404(a)	161.00	
			60.00	
	Total:		$761.00	$220.00

CENT 1999-278

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599482	4/06/99	77.1607(o)	$ 161.00	$ 60.00
7599483	4/06/99	77.1301(c)(9)	55.00	20.00
7599485	4/06/99	77.1605(k)	161.00	60.00
7599486	4/06/99	77.1104	161.00	60.00
7599487	4/06/99	77.1301(c)(10)	55.00	20.00
7599489	4/06/99	77.404(a)	161.00	60.00
7599488	4/07/99	77.1110	55.00	20.00
7599490	4/07/99	77.1104	161.00	60.00
7599491	4/07/99	72.620	207.00	
				75.00
7599492	4/08/99	77.1607(i)	173.00	65.00
	Total:		$1,350.00	$500.00

CENT 2000-326

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599790	4/12/00	77.1104	$ 131.00	$ 50.00
7599791	4/12/00	77.1605(b)	131.00	50.00
	Total:		$ 262.00	$100.00

CENT 2000-474

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367611	7/05/00	77.1605(d)	$ 131.00	$ 50.00
4367612	7/05/00	77.410(a)(l)	131.00	50.00
7600681	7/05/00	77.1607(b)	184.00	70.00
7600683	7/05/00	77.1605(b)	140.00	52.00
7600684	7/05/00	77.1104	131.00	50.00
7600685	7/05/00	77.404(a)	131.00	50.00
7600687	7/05/00	77.1605(d)	140.00	52.00

7600689	7/05/00	77.404(a)	131.00	50.00
7600690	7/05/00	77.404(a)	131.00	50.00
4367614	7/05/00	77.1710(h)	131.00	50.00
7600691	7/17/00	77.1607(i)	161.00	60.00
7600692	7/17/00	77.404(a)	131.00	50.00
7600693	7/17/00	77.1104	131.00	50.00
7600694	7/17/00	77.1104	131.00	50.00
7600696	7/17/00	77.1605(a)	140.00	52.00
7600697	7/17/00	77.1104	131.00	50.00
7600698	7/17/00	77.1605(a)	140.00	52.00
7600690	7/17/00	77.404(a)	140.00	52.00
7600700	7/17/00	71.603(a)	184.00	70.00
Total:			$2,670.00	$1,010.00

CENT 2000-475

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7600702	7/18/00	77.1605(a)	$ 140.00	$ 52.00
7600703	7/18/00	77.1605(k)	131.00	50.00
Total:			$ 271.00	$102.00

CENT 1999-50

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367449	8/11/98	75.400	$ 294.00	$ 82.00
4367450	8/11/98	75.370(a)(1)	475.00	95.00
4367451	8/11/98	75.370(a)(1)	1,122.00	234.00
4367452	8/11/98	75.220(a)(1)	557.00	111.00
7599364	8/11/98	75.1403	993.00	199.00
7599365	8/11/98	75.1100-3	277.00	75.00
7599366	8/11/98	75.1100-3	277.00	75.00
7599367	8/11/98	75.1100-2(e)(2)	277.00	75.00
7399368	8/11/98	75.1713-7(b)(4)	277.00	75.00
7599369	8/11/98	75.517	277.00	75.00
7599370	8/11/98	75.516-2(c)	277.00	75.00
7599371	8/11/98	75.516-2(c)	277.00	75.00
7599372	8/11/98	77.1104	277.00	75.00
7599373	8/12/98	75.370(a)(1)	277.00	75.00
7599374	8/12/98	75.370(a)(1)	993.00	199.00

7599375	8/12/98	75.503	993.00	199.00
7599376	8/12/98	75.503	993.00	199.00
7599377	8/12/98	77.400(a)	993.00	199.00
Total:			$9,906.00	$2,192.00

CENT 1999-51

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599378	8/12/98	77.404(a)	$ 993.00	$ 199.00
7599379	8/26/98	75.321(a)(1)	340.00	84.00
9895007	8/27/98	70.100(a)	4,096.00	819.00
Total:			$5,429.00	$1,102.00

CENT 1999-179

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3557707	11/03/98	75.383(b)(1)	$ 55.00	$ 20.00
3557708	11/03/98	75.383(b)(2)	55.00	20.00
3557709	11/03/98	77.208(e)	55.00	20.00
4367661	11/03/98	75.1715	55.00	20.00
4367662	11/03/98	77.502	55.00	20.00
4367663	11/03/98	77.513	55.00	20.00
4367664	11/03/98	77.502	55.00	20.00
4715061	11/03/98	75.601-1	2,391.00	586.00
4715062	11/03/98	75.601-1	399.00	88.00
4715063	11/03/98	75.807	55.00	20.00
4715064	11/03/98	75.601-1	399.00	88.00
4715065	11/03/98	75.601-1	399.00	88.00
4715066	11/03/98	75.602	399.00	88.00
4715339	11/03/98	75.1103-9(d)	399.00	88.00
4715340	11/03/98	75.400	399.00	88.00
4896082	11/03/98	75.400	399.00	88.00
4896083	11/03/98	75.1722(b)	399.00	88.00
4896084	11/03/98	75.1104	55.00	20.00
4896085	11/03/98	75.1722(b)	399.00	88.00
Total:			$6,477.00	$1,558.00

CENT 1999-180

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4896086	11/03/98	75.333(h)	$ 55.00	$ 20.00
4896088	11/03/98	75.208	399.00	88.00
4896089	11/03/98	75.370(a)(1)	399.00	88.00
4896092	11/03/98	75.208	399.00	88.00
4896093	11/03/98	75.370(a)(1)	399.00	88.00
4896097	11/03/98	75.360(e)	55.00	20.00
4896098	11/03/98	75.1713-7(c)	55.00	20.00
3557710	11/04/98	77.516	55.00	20.00
3557711	11/04/98	77.400(a)	55.00	20.00
3557712	11/04/98	77.400	399.00	88.00
3557713	11/04/98	75.516-2(c)	55.00	20.00
3557714	11/04/98	77.904	55.00	20.00
3557715	11/04/98	75.508	55.00	20.00
3557716	11/04/98	70.210(b)	55.00	20.00
3557741	11/04/98	75.400	399.00	88.00
3557742	11/04/98	75.211(d)	55.00	20.00
3557743	11/04/98	75.1715	55.00	20.00
3557744	11/04/98	75.312(d)	55.00	20.00
3557745	11/04/98	75.312(c)	55.00	20.00
Total:			$3,109.00	$788.00

CENT 1999-181

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3557746	11/04/98	75.360(f)	$ 55.00	$ 20.00
3557747	11/04/98	77.208(c)	55.00	20.00
3557748	11/04/98	75.503	399.00	88.00
3557749	11/04/98	75.1100-3	1,122.00	234.00
3557750	11/04/98	75.1100-3	55.00	20.00
3557751	11/04/98	75.503	399.00	

				88.00
3557752	11/04/98	75.400	399.00	
				88.00
3557753	11/04/98	75.1100-3	55.00	20.00
3557754	11/04/98	75.1107-9(a)(1)	55.00	20.00
3557755	11/04/98	75.380(d)(4)(ii)	55.00	20.00
4367665	11/04/98	77.404(a)	55.00	20.00
4367666	11/04/98	48.25	1,419.00	284.00
4367667	11/04/98	77.502	55.00	
				20.00
4367668	11/04/98	75.1715	55.00	20.00
4715070	11/04/98	75.342(a)(4)	55.00	20.00
4715072	11/04/98	75.1107-16(a)	399.00	88.00
4715081	11/04/98	75.1100-3	399.00	88.00
4896099	11/04/98	75.400	399.00	
				88.00
4896100	11/04/98	75.211(d)	55.00	20.00
Total:			$5,540.00	$1,266.00

CENT 1999-182

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3557717	11/05/98	75.370(a)(1)	$ 55.00	$ 20.00
3557718	11/05/98	75.503	1,122.00	
				234.00
3557756	11/05/98	77.404(a)	399.00	88.00
3557757	11/05/98	77.404(a)	55.00	20.00
3557758	11/05/98	77.1605(d)	399.00	88.00
3557759	11/05/98	77.1103(a)	55.00	20.00
3557760	11/05/98	77.408	475.00	95.00
3560485	11/05/98	77.1103(a)	55.00	20.00
3560486	11/05/98	77.404(a)	55.00	20.00
3560487	11/05/98	77.502	399.00	
				88.00
3560488	11/05/98	77.516	55.00	
				20.00
3560489	11/05/98	77.502	55.00	
				20.00
3560490	11/05/98	77.404(a)	55.00	20.00
3560491	11/05/98	77.400(a)	55.00	20.00
3560492	11/05/98	77.400(a)	399.00	88.00
3560493	11/05/98	77.400(a)	399.00	88.00
3560494	11/05/98	77.400(c)	399.00	88.00

3560495	11/05/98	77.516	55.00	20.00
3560496	11/05/98	77.516	55.00	20.00
	Total:		$4,596.00	$1,077.00

CENT 1999-183

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3560497	11/05/98	77.1109(d)	$ 55.00	$ 20.00
3560498	11/05/98	77.1710(h)	55.00	20.00
3560499	11/05/98	50.40(b)	55.00	20.00
3560500	11/05/98	77.502	399.00	88.00
4715071	11/05/98	75.1714-3(b)	1,122.00	234.00
4715087	11/05/98	75.506-1	1,122.00	234.00
4896185	11/05/98	77.516	55.00	20.00
4367247	11/17/98	75.203(d)	55.00	20.00
4367248	11/18/98	75.370(a)(1)	55.00	20.00
4367674	12/04/98	75.208	399.00	88.00
4367675	12/04/98	75.211(d)	55.00	20.00
	Total:		$3,427.00	$784.00

CENT 1999-211

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3590059	10/20/98	75.400	$ 1,270.00	$254.00
3590060	10/21/98	75.383(a)	872.00	162.00
4057939	10/21/98	75.380(d)(2)	1,270.00	254.00
4367252	1/27/99	75.1100-3	55.00	20.00
4361254	1/27/99	75.807	55.00	20.00
4367255	1/27/99	75.1914(a)	993.00	195.00
	Total:		$ 4,515.00	$905.00

CENT 1999-234

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599673	2/09/99	75.503	$ 760.00	$ 158.00
7599674	2/09/99	75.517	55.00	20.00
7599676	2/09/99	75.800-3(c)	760.00	158.00
7599677	2/10/99	75.321(a)(1)	760.00	158.00
7599678	2/10/99	75.370(a)(1)	1,771.00	354.00
7599679	2/10/99	75.360(a)(1)	1,771.00	354.00
7599684	3/04/99	75.503	2,168.00	434.00
7599685	3/04/99	75.503	2,168.00	434.00
7599686	3/04/99	75.1722(a)	55.00	20.00
3849642	3/10/99	75.350	872.00	174.00
4367541	3/31/99	75.342(a)(4)	259.00	72.00
7600008	4/05/99	75.362(a)(1)	760.00	158.00
7600009	4/05/99	75.321(a)(1)	760.00	158.00
7600010	4/05/99	75.400	55.00	20.00
Total:			$12,974.00	$2,672.00

CENT 1999-279

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599604	11/10/98	75.601-1	$ 2,000.00	$ 400.00
7599675	2/09/99	75.803	9,500.00	1,900.00
4862082	3/10/99	75.380(f)(5)(i)	55.00	20.00
Total:			$11,555.00	$2,320.00

CENT 1999-303

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4862088	3/11/99	75.1722(a)	$ 55.00	$ 20.00
4862089	3/11/99	75.1104	55.00	20.00
4862091	3/11/99	77.402	55.00	20.00
4862092	3/11/99	77.404(a)	55.00	20.00

4862093	3/11/99	77.402	55.00	20.00
4862094	3/13/99	77.516	55.00	20.00
4862095	3/13/99	50.20(b)	55.00	20.00
4367519	5/27/99	75.330(b)(1)(ii)	1,771.00	354.00
Total:			$2,156.00	$494.00

CENT 1999-304

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4862147	3/09/99	75.312(c)	$ 55.00	$ 20.00
4862148	3/09/99	75.312(d)	55.00	20.00
4862149	3/09/99	75.1101-1(b)	55.00	20.00
4862150	3/09/99	75.503	55.00	20.00
4862151	3/09/99	75.333(b)(3)	55.00	20.00
4862152	3/09/99	77.403	55.00	20.00
4862153	3/09/99	75.370(a)(1)	399.00	88.00
4862081	3/10/99	75.1403-6(a)(2)	55.00	20.00
4862083	3/10/99	75.400	399.00	88.00
4862155	3/10/99	75.512	55.00	20.00
1862156	3/10/99	75.400	399.00	88.00
4862157	3/10/99	75.1715	55.00	20.00
4862158	3/10/99	75.900	55.00	20.00
4862159	3/10/99	75.1713-7(b)(4)	55.00	20.00
4862160	3/10/99	75.1104	55.00	20.00
4862084	3/11/99	75.360(b)(8)	55.00	20.00
4862085	3/11/99	75.1715	55.00	20.00
4862086	3/11/99	75.400	399.00	88.00
4862087	3/11/99	75.1100-3	399.00	88.00
Total:			$2,765.00	$720.00

CENT 1999-339

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4862090	3/11/99	75.220(a)(1)	$ 3,500.00	$ 700.00

4862096	3/13/99	75.1720(c)	872.00	174.00
3849649	6/09/99	75.370(a)(1)	5,000.00	1,000.00
3849650	6/09/99	30 U.S.C.§814(d)(2)	7,000.00	1,400.00
Total:			$16,372.00	$3,274.00

CENT 2000-158

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7600026	5/19/99	75.901	$ 5,000.00	$1,000.00
7600033	5/21/99	77.502	5,000.00	1,000.00
7600038	5/21/99	75.370(a)(1)	8,800.00	1,740.00
7600044	5/27/99	75.514	7,500.00 1,500.00	
7599938	6/01/99	75.400	1,200.00	240.00
4367689	6/15/99	75.330(b)(1)(ii)	9,500.00	1,900.00
7602610	8/31/99	75.503	55.00	20.00
7602611	8/31/99	75.400	277.00	75.00
7602613	8/31/99	75.362(a)(1)	655.00	130.00
7602614	8/31/99	75.400	277.00 75.00	
7602615	8/31/99	75.1106-3(a)(2)	55.00	20.00
7625405	8/31/99	77.516	55.00	20.00
7625406	8/31/99	77.208(e)	55.00	20.00
7625407	8/31/99	75.1100-3	55.00	20.00
7625409	8/31/99	75.1722(a)	55.00	20.00
7625410	8/31/99	75.1104	55.00	20.00
7625411	8/31/99	75.333(b)(3)	55.00	20.00
7625412	8/31/99	75.33383	55.00	20.00
7625413	8/31/99	75.400	55.00	20.00
Total:			$38,759.00	$7,860.00

CENT 2000-159

CITATION/	Assessed

ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7625414	8/31/99	75.1107-1(a)(3)(ii)	$ 55.00	$ 20.00
7625415	8/31/99	75.1722(b)	55.00	20.00
7625416	8/31/99	75.904	55.00	20.00
7625417	8/31/99	75.904	55.00	20.00
7625418	8/31/99	75.516-2(c)	55.00	20.00
7625419	8/31/99	75.400	340.00	84.00
7625420	8/31/99	75.360(a)(1)	294.00	82.00
7625421	8/31/99	75.520	55.00	20.00
7625422	8/31/99	75.520	55.00	20.00
7625423	8/31/99	75.516	55.00	20.00
7625555	8/31/99	77.1104	55.00	20.00
7625556	8/31/99	77.1101(c)	55.00	20.00
7625557	8/31/99	77.1101(a)	55.00	20.00
7625558	8/31/99	77.1109(d)	55.00	20.00
7625559	8/31/99	75.400	655.00	130.00
7625560	8/31/99	75.364(b)(4)	55.00	20.00
7625561	8/31/99	75.202(a)	399.00	85.00
7625562	8/31/99	75.1100-3	55.00	20.00
7625563	8/31/99	75.1106-5(a)	55.00	20.00
Total:			$2,513.00	$681.00

CENT 2000-160

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7625564	8/31/99	75.807	$ 55.00	$ 20.00
7625565	8/31/99	75.807	55.00	20.00
7625566	8/31/99	75.202(a)	399.00	88.00
7625573	8/31/99	77.809	399.00	88.00
7625574	8/31/99	75.311(f)	55.00	20.00
7602616	9/01/99	75.383(b)(2)	55.00	20.00
7602617	9/01/99	75.383(b)(3)	55.00	20.00
7602618	9/01/99	75.1702	55.00	20.00
7602619	9/01/99	75.202(a)	277.00	75.00

7602620	9/01/99	75.503	55.00	20.00
7602621	9/01/99	75.503	277.00	75.00
7602622	9/01/99	75.520	277.00	75.00
7602623	9/01/99	77.205(a)	277.00	75.00
7602624	9/01/99	77.205(a)	277.00	75.00
7602625	9/01/99	77.404(a)	277.00	75.00
7602626	9/01/99	77.1607(u)	55.00	20.00
7602627	9/01/99	77.1104	55.00	20.00
7602628	9/01/99	77.502	55.00	20.00
7602629	9/01/99	77.1710(e)	277.00	75.00
Total:			$3,287.00	$901.00

CENT 2000-161

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7602630	9/01/99	77.1104	$ 277.00	$ 75.00
7602631	9/01/99	77.404(a)	277.00	75.00
7625424	9/01/99	75.503	655.00	130.00
7625426	9/01/99	48.9(a)	55.00	20.00
7625427	9/01/99	48.9(a)	55.00	20.00
7625428	9/01/99	75.1711-3	55.00	20.00
7625567	9/01/99	75.202(a)	277.00	75.00
7625568	9/01/99	77.1104	55.00	20.00
7625569	9/01/99	77.1104	55.00	20.00
7625570	9/01/99	77.516	55.00	20.00
7625571	9/01/99	77.400(a)	277.00	75.00
7625572	9/01/99	77.1104	55.00	20.00
4367540	9/29/99	75.503	277.00	75.00
Total:			$2,425.00	$645.00

CENT 2000-164

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty

7599973	11/15/99	75.1100-2(e)(1)	$ 55.00	$ 20.00
7599974	11/15/99	75.1100-2(e)(2)	55.00	20.00
7600085	11/15/99	77.206(c)	55.00	20.00
7600086	11/15/99	77.1104	55.00	20.00
7600087	11/15/99	77.404(a)	55.00	20.00
7600088	11/15/99	77.1104	55.00	20.00
7600089	11/15/99	77.202	55.00	20.00
7600090	11/15/99	77.1104	55.00	20.00
7600091	11/15/99	77.1104	55.00	20.00
7600092	11/15/99	77.502	55.00	20.00
7600094	11/15/99	77.1103(d)	55.00	20.00
7600095	11/15/99	75.203(e)(2)	242.00	75.00
7600096	11/15/99	75.1718	55.00	20.00
7600109	11/15/99	75.516-2(c)	55.00	20.00
7600112	11/15/99	75.1100-3	475.00	95.00
7600113	11/15/99	75.1107-16(c)	475.00	95.00
7600116	11/15/99	75.1725(a)	475.00	95.00
7600118	11/15/99	75.370(a)(1)	55.00	20.00
7600119	11/15/99	75.370(a)(1)	242.00	75.00
Total:			$2,679.00	$715.00

CENT 2000-165

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7600121	11/15/99	75.370(a)(1)	$ 475.00	$ 95.00
7599976	11/17/99	75.1725(a)	55.00	20.00
7599977	11/17/99	75.400	242.00	75.00
7600123	11/17/99	77.404(a)	55.00	20.00
4366803	11/18/99	75.400	242.00	75.00
7600098	11/18/99	75.1914(a)	55.00	20.00
7600099	11/18/99	75.503	55.00	20.00
7600100	11/18/99	75.400	55.00	20.00
7600141	11/18/99	75.1914(a)	655.00	130.00
7600142	11/18/99	75.1914(a)	655.00	130.00
7600145	11/22/99	75.1713-7(a)	55.00	20.00
7600146	11/22/99	75.606	55.00	20.00
7600147	11/22/99	75.400	317.00	

				85.00
7600148	11/22/99	75.807	55.00	20.00
7600149	11/22/99	75.400	55.00	
				20.00
7600150	11/23/99	77.206(c)	317.00	85.00
4366805	11/29/99	75.1909(a)(3)(i)	242.00	75.00
4367701	11/29/99	75.1909(b)(4)	55.00	20.00
4367702	11/29/99	75.1905(b)(5)	55.00	20.00
Total:			$3,750.00	$970.00

CENT 2000-166

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599978	11/29/99	75.364(b)(4)	$ 55.00	$ 20.00
7599979	11/29/99	75.503	242.00	
				75.00
7600151	11/29/99	77.1104	55.00	20.00
7600152	11/29/99	75.400	55.00	
				20.00
7600153	11/29/99	75.1906(d)	55.00	20.00
4366811	12/01/99	75.516-2(c)	55.00	20.00
4367703	12/01/99	75.342(a)(4)	259.00	76.00
4367704	12/06/99	75.370(a)(1)	475.00	95.00
4367705	12/06/99	75.360(a)(1)	55.00	20.00
4366812	12/07/99	75.503	55.00	
				20.00
7600129	12/21/99	75.364(b)	242.00	75.00
7600130	12/21/99	77.208(d)	242.00	75.00
7600131	12/21/99	75.400	340.00	
				84.00
7600132	12/21/99	75.516-2(c)	55.00	20.00
7600133	12/21/99	75.333(e)(1)(ii)	55.00	20.00
7600134	12/21/99	75.361(b)	55.00	20.00
4541921	12/27/99	75.360(f)	55.00	20.00
4541922	12/27/99	75.807	55.00	
				20.00
Total:			$2,460.00	$720.00

CENT 2000-167

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4366814	1/07/00	75.516-2(c)	$ 55.00	$ 20.00
4366815	1/07/00	75.516-2(c)	55.00	20.00

4366816	1/07/00	75.333-(c)(2)	55.00	20.00
4366817	1/07/00	75.333-(c)(2)	55.00	20.00
4366818	1/07/00	75.516-2(c)	55.00	20.00
4366819	1/07/00	75.333-(c)(2)	55.00	20.00
4366820	1/07/00	75.601-1	55.00	20.00
7600154	1/07/00	75.601-1	55.00	20.00
7600155	1/07/00	75.902	55.00	20.00
7600156	1/10/00	75.400	55.00	20.00
Total:			$550.00	$200.00

CENT 2000-196

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367389	9/01/99	50.20(a)	$55.00	$ 20.00
4367392	9/01/99	50.11(b)	55.00	20.00
4896874	9/01/99	50.11.(b)	55.00	20.00
4896875	9/01/99	50.20(a)	55.00	20.00
7600105	9/21/99	75.1722(c)	55.00	20.00
Total:			$275.00	$100.00

CENT 2000-255

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7602612	8/31/99	75.400	$ 9,000.00	$1,800 .00
7600110	11/15/99	75.400	399.00	90.00
7600111	11/15/99	75.400	399.00	90.00
7600114	11/15/99	75.400	399.00	90.00
7600115	11/15/99	75.400	399.00	90.00
7600117	11/15/99	75.333(e)(l)(ii)	55.00	20.00
7600120	11/15/99	75.333(e)(l)(ii)	55.00	20.00

7600124	11/17/99	75.400	224.00	70.00
7600125	11/17/99	75.400	224.00	70.00
4366006	11/29/99	75.1910(g)	55.00	20.00
4366807	11/29/99	75.1909(a)(3)(x)	55.00	20.00
4366808	11/29/99	75.1909(a)(10)	55.00	20.00
4366809	11/29/99	75.1910(i)	55.00	20.00
4366810	11/29/99	75.1910(j)	55.00	20.00
4367706	1/31/00	75.1909(a)(3)(i)	55.00	20.00
4367707	1/31/00	75.202(a)	196.00	75.00
4367708	1/31/00	75.364(b)(4)	55.00	20.00
Total:			$11,735.00	$2,555.00

CENT 2000-265

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3557635	2/17/00	75.400	$ 55.00	$ 20.00
3470271	3/07/00	75.380(d)(4)	55.00	20.00
4367711	3/09/00	75.202(a)	150.00	55.00
4367712	3/14/00	75.403	242.00	75.00
Total:			$502.00	$170.00

CENT 2000-290

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367459	11/18/99	75.1100-3	$ 3,500.00	$ 700.00
3557621	2/15/00	75.364(b)(4)	55.00	20.00
3557622	2/15/00	75.400	55.00	20.00
3557623	2/15/00	75.1910(f)	55.00	20.00
3557624	2/15/00	75.400	196.00	75.00
3557625	2/15/00	75.1911(a)(4)	55.00	20.00
3557626	2/15/00	75.1909(d)	55.00	20.00
7633535	2/15/00	75.1101-1(b)	55.00	20.00
7633536	2/15/00	75.1103-4(b)	55.00	20.00
7633537	2/15/00	75.1722(b)	196.00	75.00
7633538	2/15/00	75.1722(b)	196.00	75.00
7633539	2/15/00	75.400	55.00	20.00
7633540	2/15/00	75.400	55.00	

				20.00
7633541	2/15/00	77.404(a)	55.00	20.00
7633542	2/15/00	77.205(b)	55.00	20.00
7633543	2/15/00	77.1110	55.00	20.00
7633544	2/15/00	77.1103(a)	196.00	75.00
7633545	2/15/00	75.203(e)	55.00	20.00
3557627	2/16/00	75.202(a)	196.00	75.00
Total:			$5,195.00	$1,335.00

CENT 2000-291

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
3557628	2/16/00	75.516	$55.00	$ 20.00
3557629	2/16/00	75.202(a)	196.00	75.00
3557630	2/16/00	75.333(c)(3)	55.00	20.00
3557631	2/16/00	75.364(g)	55.00	20.00
3557632	2/16/00	75.1202-1(b)(3)	55.00	20.00
4704677	2/16/00	75.364(h)	55.00	20.00
4704678	2/16/00	75.364(b)	55.00	20.00
4704679	2/16/00	75.372(a)(1)	55.00	20.00
7633546	2/16/00	75.1720(a)	207.00	75.00
7633547	2/16/00	75.400	196.00	75.00
7633548	2/16/00	75.194(f)	55.00	20.00
7633549	2/16/00	75.1914(a)	196.00	75.00
7633550	2/16/00	75.202(a)	55.00	20.00
7633551	2/16/00	75.400	55.00	20.00

7633552	2/16/00	75.1713-7(c)	55.00	20.00
7633553	2/16/00	75.202(a)	55.00	20.00
3557633	2/17/00	75.360(e)	55.00	20.00
3557634	2/17/00	75.202(a)	196.00	75.00
3557636	2/17/00	75.1103-8(b)	55.00	20.00
Total:			$1,761.00	$655.00

CENT 2000-292

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7633554	2/17/00	75.604(b)	$196.00	$ 75.00
7633555	2/17/00	75.1107-9(a)(l)	55.00	20.00
7633556	2/17/00	75.1107-9(a)(l)	55.00	20.00
4367709	2/29/00	75.208	196.00	75.00
4367713	3/23/00	75.1909(b)(5)	55.00	20.00
4367714	3/23/00	75.220(a)(l)	150.00	55.00
4367715	3/28/00	75.1200-1(h)	55.00	20.00
Total:			$762.00	$285.00

CENT 2000-299

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7600043	5/25/99	75.513	$ 55.00	$ 20.00
7599935	6/01/99	75.364(a)(1)	55.00	20.00
7599936	6/01/99	77.404(a)	55.00	20.00
7599937	6/01/99	75.1724	317.00	85.00
3849646	6/02/99	75.400	317.00	85.00
3849647	6/02/99	75.1722(b)	317.00	85.00
3849648	6/02/99	75.400	55.00	20.00
4367520	6/03/99	77.207	55.00	20.00
4367681	6/05/99	77.401(a)(2)	317.00	85.00
4367682	6/07/99	75.503	317.00	85.00

4367683	6/07/99	75.503	317.00	85.00
4367684	6/07/99	75.310(a)(3)	55.00	20.00
4367685	6/09/99	75.1103-4(e)	55.00	20.00
4367686	6/14/99	77.1605(d)	55.00	20.00
4367687	6/14/99	77.1605(b)	317.00	85.00
4367688	6/15/99	75.330(b)(1)(ii)	872.00	175.00
2930987	7/12/99	75.220(a)(1)	277.00	75.00
7600065	7/22/99	75.604(d)	55.00	20.00
Total:			$3,863.00	$1,025.00

CENT 2000-300

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7625425	9/01/99	30 U.S.C. §109(a)	$ 55.00	$ 20.00
7600081	10/13/99	75.370(a)(1)	317.00	85.00
7600082	10/13/99	75.511	55.00	20.00
7599960	10/19/99	75.403	55.00	20.00
7599961	10/19/99	75.370(a)(1)	294.00	85.00
Total:			$776.00	$230.00

CENT 2000-327

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599999	2/07/00	75.400	$196.00	$ 75.00
7600000	2/07/00	75.400	196.00	75.00
7600281	2/07/00	75.202(a)	196.00	75.00
Total:			$588.00	$225.00

CENT 2000-328

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599975	11/15/99	75.400	$ 2,000.00	$ 400.00
7600122	11/15/99	75.360(a)(1)	5,000.00	1,000.00
7600097	11/22/99	75.1906(a)	1,500.00	300.00
7600143	11/22/99	75.400	1,500.00	300.00
7600144	11/22/99	75.1906(b)	850.00	170.00

4367719	4/28/00	75.400	242.00	75.00
Total:			$11,092.00	$2,245.00

CENT 2000-418

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367720	5/10/00	50.20(a)	$ 55.00	$ 20.00
4541965	5/22/00	75.220(a)(1)	55.00	20.00
4541958	6/05/00	75.202(a)	55.00	20.00
4541959	6/05/00	75.333(b)	55.00	20.00
4541960	6/05/00	75.202(a)	340.00	85.00
4542001	6/05/00	75.202(a)	55.00	20.00
4542002	6/05/00	75.512	55.00	20.00
4542003	6/05/00	75.705-(b)(a)(1)	55.00	20.00
4542004	6/05/00	75.202(a)	131.00	50.00
4542005	6/05/00	75.807	55.00	20.00
4542006	6/05/00	75.512	55.00	20.00
4542007	6/05/00	75.1103-1(a)	55.00	20.00
4542008	6/05/00	75.1106-5(a)	55.00	20.00
4542009	6/05/00	75.1725(a)	131.00	50.00
4542010	6/05/00	75.203(e)(1)	131.00	50.00
4542011	6/06/00	75.1722(c)	131.00	50.00
4542012	6/06/00	75.364(a)(2)(iii)	131.00	50.00
4542021	6/08/00	75.503	55.00	20.00
4542022	6/08/00	75.1403	55.00	

				20.00
	Total:		$1,710.00	
				$590.00

CENT 2000-420

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4542023	6/08/00	75.1914(a)	$ 55.00	$ 20.00
7600140	6/12/00	50.20(a)	55.00	20.00
4541971	6/15/00	75.310(f)	55.00	20.00
4542030	6/22/00	75.1715	131.00	50.00
	Total:		$296.00	$110.00

CENT 2000-426

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7636009	3/13/00	75.372(b)	$ 55.00	$ 20.00
4541961	5/11/00	75.400	150.00	55.00
4541962	5/11/00	75.203(e)(1)	150.00	55.00
4541963	5/22/00	75.333(c)(2)	55.00	20.00
4541966	5/22/00	75.400	55.00	20.00
4541967	5/22/00	75.1907(b)(2)	55.00	20.00
7600304	5/22/00	75.1713-7(a)(l)	55.00	20.00
7600305	5/22/00	77.1104	55.00	20.00
7600306	5/22/00	77.208(c)	55.00	20.00
7600307	5/22/00	75.400	55.00	20.00
7600308	5/22/00	75.400	150.00	55.00
7600309	5/22/00	75.400	150.00	55.00
7600310	5/22/00	75.400	150.00	55.00
7600486	5/22/00	75.400	55.00	20.00
7600488	5/22/00	75.1403	196.00	75.00
7600490	5/22/00	75.1906(k)	55.00	20.00

7600491	5/22/00	75.512	55.00	20.00
7600497	5/22/00	75.1725(a)	196.00	75.00
7600498	5/22/00	75.1722(a)	196.00	75.00
Total:			$1,943.00	$720.00

CENT 2000-427

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7600502	5/22/00	75.308(f)(4)(ii)	$ 55.00	$ 20.00
4541981	5/23/00	75.701	55.00	20.00
4541982	5/23/00	75.1910(i)	55.00	20.00
7600311	5/23/00	75.380(d)(2)	55.00	20.00
7600504	5/23/00	77.1103(b)	55.00	20.00
7600505	5/23/00	75.1910(b)	196.00	75.00
Total:			$471.00	$175.00

CENT 2000-428

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7600282	2/07/00	75.370(a)(1)	$3,500.00	$700.00
4541946	5/30/00	77.516	55.00	20.00
4541969	6/01/00	75.1104	55.00	20.00
Total:			$3,610.00	$740.00

CENT 2001-6

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7600313	6/28/00	75.203(e)(2)	$131.00	$ 50.00
7600314	6/28/00	75.203(b)	131.00	50.00
7600315	6/28/00	75.1909(a)(3)(i)	55.00	20.00
4541973	7/06/00	75.202(a)	131.00	50.00
4542031	7/06/00	75.333(h)	55.00	20.00
Total:			$503.00	$190.00

CENT 2001-7

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
4367716	3/28/00	75.220(a)(1)	$ 900.00	$ 180.00
7600487	5/22/00	75.400	1,000.00	200.00

7600489	5/22/00	75.400	1,800.00	360.00
7600492	5/22/00	75.400	1,800.00	360.00
7600493	5/22/00	75.400	1,300.00	260.00
7600501	5/22/00	75.400	1,800.00	360.00
7600503	5/22/00	75.400	1,800.00	360.00
7600510	5/31/00	77.404(a)	800.00	160.00
4542013	6/08/00	75.334(b)(2)	1,500.00	300.00
4541936	7/07/00	50.20(a)	55.00	20.00
Total:			$12,755.00	$2,560.00

CENT 2000-163

CITATION/ ORDER NO.	DATE	30 C.F.R.§	Proposed Penalty	Assessed Penalty
7599015	8/11/99	50.20(a)	$224.00	$ 70.00
4366680	8/17/99	77.1707(b)	224.00	70.00
7599734	10/27/99	77.1701(a)	294.00	82.00
Total:			$742.00	$ 222.00
TOTAL:			**$213,201.00**	**$49,398.00**

ORDER

James V. Smedley **IS ORDERED** to pay a civil penalty of $1,600.00 within 30 days of the date of this proceeding and upon full payment, Docket No. CENT 2000-391 is **DISMISSED**.

Kenneth Clark **IS ORDERED** to pay a civil penalty of $900.00 within 30 days of the date of this proceeding and upon full payment Docket No. CENT 2000-400 is **DISMISSED**.

Tim Ball **IS ORDERED** to pay a civil penalty of $800.00 within 30 days of the date of this proceeding and upon full payment Docket No. CENT 2000-401 is **DISMISSED.**

Finally, GCI **IS ORDERED** to pay a civil penalty of $72,298.00 within 30 days of the

date of this proceeding and upon full payment Docket Nos. CENT 1999-178 and CENT 2000-197, etc., are **DISMISSED**.

David F. Barbour
Chief Administrative Law Judge

Distribution: (Certified Mail)

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/wd