

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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May 24,2000

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 99-222
Petitioner	:	A. C. No. 36-00958-04218
v.	:	
	:	Docket No. PENN 99-232
EIGHTY-FOUR MINING COMPANY,	:	A. C. No. 36-00958-04220
Respondent	:	
	:	Mine No. 84

DECISION

Appearances: Linda M. Henry, Esq., Office of the Solicitor, U. S. Department of Labor, Philadelphia, Pennsylvania for Petitioner;
Elizabeth S. Chamberlin, Esq., CONSOL Inc., Pittsburgh, Pennsylvania for Respondent.

Before: Judge Weisberger

Statement of the Case

These cases are before me upon Petitions for Assessment of Civil Penalty, filed by the Secretary of Labor (Secretary) seeking the imposition of a civil penalties against Eighty-Four Mining Company (“Eighty-Four”) based upon citations and orders issued to Eighty-Four alleging violations of various mandatory standards set forth in Title 30 of the Code of Federal Regulations. Pursuant to notice, the cases were heard in Pittsburgh, Pennsylvania on January 25 through 27, 2000. On March 27, 2000, the secretary filed a post-hearing argument and proposed findings of fact. On March 29, 2000, Respondent filed a post-hearing brief and findings of fact.¹

I. The Secretary's Evidence

On March 10, 1999, Inspector James Dickey inspected the Eighty-Four Mine’s 6 North

¹At the conclusion of the hearing, the parties were informed by the undersigned that, subsequent to the filing of proposed findings of fact, the parties shall file responses to other sides' proposed findings of fact. To date, neither party filed any response.

Section. Eighty-Four used a continuous miner and a three entry system to mine coal from the Pittsburgh seam in the section. The section was mining coal during Dickey's inspection, and the had produced coal on the previous shift.

Dickey walked through all entries and crosscuts of the 6 North section during his inspection. He observed "fine, dry and coarse coal accumulations over the entire section." (Tr. I. 77)² In this connection he testified that "[I]ve been inspecting for a number of years and this is probably some of the worst accumulations I've ever observed on a mine section." (Tr. I. 160) Miner walkaround and Eighty-Four employee Dan Clark also observed coal accumulations in all three entries.

Dickey measured the accumulations with a ruler and tape measure. He indicated that the accumulations in the No.1 entry were 1 to 3 ½ inches deep for a distance in excess of 120 feet in length. The accumulations covered an area of the mine floor 12 feet wide.

Dickey also observed fine and coarse coal along both ribs of the crosscut from No. 1 to No. 2 entries. He observed a pile of coal at the No. 1 entry side of this crosscut. He measured the pile as 5 to 6 inches deep, and 24 inches wide by 16 feet in length.

The accumulations along the inby rib measured 14 to 20 inches deep by 24 inches wide by 46 feet in length. Dickey also measured accumulations of coal along the outby rib. They measured 3 ½ inches deep and 8 to 11 inches wide for a distance of 27 feet. After that point, the coal measured 15 inches deep by 8 inches wide for a distance of 22 feet.

Dickey observed a pile of coal 20 inches deep, 35 inches wide, and 5 feet in length where the No. 64 ½ crosscut had holed through to the No. 2 entry. He observed another pile of coal 20 inches deep, 5 feet wide, and 6 ½ feet long at the outby corner of a 12 foot deep notch mined into the rib of the No. 2 entry.

Dickey observed a notch in this area that had coal along both ribs measuring 24 inches deep by 35 inches wide. Also, coal measuring 4 to 6 inches deep covered the entire floor of this notch.

In the No. 2 entry, Dickey observed an accumulation of coal which measured 3 to 14 inches deep along the left rib for a distance of 140 feet. He also observed accumulations along the right rib which he measured as 14 inches deep by 20 inches wide, and 8 to 20 inches deep by 12 inches wide for the entire length of the entry. This coal was dry to the touch. He also observed a pile of coal which he measured as 24 inches deep, 5 feet wide, and 16 feet in length at the mouth of the No. 2 entry. The coal was dry to the touch.

²Tr. I. refers to the transcript of the hearing held January 25; Tr. II. to the transcript of the hearing held January 26, and Tr. III. to the transcript of the hearing held January 27, 2000.

Outby the crosscut in the No. 2 entry, Dickey observed accumulations which measured 4 to 6 inches deep, 6 inches wide, and 38 feet in length. Accumulations measured 15 inches deep, 15 inches wide, and 6 feet in length along the left rib, and 8 to 10 inches deep, and 12 inches wide along the right rib. They extended for a distance of over 100 feet. This coal was dry to the touch.

Dickey observed coal along the inby rib of the crosscut from No. 2 to No. 3 entry. He measured this coal as 14 inches deep by 20 inches wide for a distance of 7 feet, and 10 to 12 inches deep for a distance of 20 feet. He observed coal for a distance of 20 feet along the outby rib that was 10 to 12 inches deep and 20 inches wide. This coal was both damp and dry.

Along the left rib of the No. 3 entry, Dickey observed coal which measured 3 to 8 inches deep, and 12 inches wide for a distance of 92 feet. In a notch along this rib, he measured coal 18 to 20 inches deep, 15 inches wide, and 6 feet in length. This coal was damp by observation and touch.

Along the inby rib of the No. 64 crosscut, Dickey observed coal measuring 8 inches deep, 12 inches wide, for a distance of 46 feet in length. The fan was located in this crosscut. The coal was dry.

Eighty-Four mine foreman Dan Jones confirmed that he saw coal in the No. 3 entry. He acknowledged that regarding one pile of coal located in the No. 64 crosscut between the No. 2 to No. 3 entry, "...we should have cleaned." (Tr. II. 290) Jones acknowledged that the loader operators weren't doing "a hundred percent job" on cleaning against the rib area. (Tr. III. 14)

Dickey testified that he was concerned about the equipment in the 6 North Section causing an ignition of the accumulations. Dickey observed that the shuttle car cables in the 6 North section wound and rewound constantly on the mine floor. Dickey testified that in the normal course of mining, due to this constant movement, shuttle car cables are "very likely" to be damaged. (Tr. I. 166) He testified that the "shuttle car cable...[could cause] a dust ignition in this case when it's located around deposits of fine dry coal." (Tr. I. 165)

Dickey opined, in essence, that the accumulations were hazardous due to the extent of dry accumulations, and the presence of ignition sources. In this connection, he testified that continuous miners could ignite coal accumulations. He stated that in the normal course of mining, continuous miners such as those at the Eighty-Four Mine used drill bits which generate sparks. Dickey stated that during mining, continuous miners strike rock on the mine floor, and also strike sulphur balls. According to Dickey, this happens "all the time" in the normal course of mining. (Tr. I. 164, 165) Dickey based this observation on his experience inspecting, and running a miner in the Pittsburgh seam for eight years.

Dickey testified that Eighty-Four Mine had five ignitions that he knew about prior to this inspection. Three ignitions occurred in the two years prior to this inspection. Two ignitions

occurred during the operations of continuous miners, and one during the operation of a roof bolter.

In the time period January to March 1999, Eighty-Four Mine liberated six and a half million cubic feet of methane in a 24 hour period. It liberated 4,500 cubic feet a minute. Dickey measured 0.3 percent of methane at the face of No. 3 entry, 0.2 percent methane at the face of the No.2 entry, and 0.2 percent methane at the face of the No. 1 entry.

Seven persons were working in the No. 1 entry. They were all working in intake air. Dickey testified that the accumulations in the 6 North Section were reasonably likely to result in an explosion or mine fire. He testified the explosion would result in lost workdays, and possibly even fatal injuries.

According to Dickey and walkaround Dan Clark, they did not see anyone cleaning accumulations at the time that Dickey issued the order.

Nineteen citations or orders were issued to Eighty-Four mine for violations of § 75. 400 for the period from September 1998 to March 5, 1999.

Dickey had previously issued seven citations at this mine for accumulations in the 6 North section of coal and coal dust on the mine floor two months prior to the March 10, 1999 inspection. Dickey had also issued citations in July and August 1998 for accumulations on the mine floor.

Dickey discussed the importance of monitoring coal accumulations with the operator's management personnel after the issuance of each of those citations issued in January to March 1999, and July to August, 1998. In addition, Dickey spent four hours with managers Brad DeBusk and Michael Sinovich on January 29, 1999 discussing accumulations. Dickey told mine management that they must clean during the mining cycle. He told them that they would be issued citations if they did not clean up as mining progressed, "and advised them of the possibility of getting unwarrantable citations." (Tr. I. 120)

Dickey had these conversations with "just about every official at the coal mine." (Tr. I 160) According to Dickey, Safety Manager Brad DeBusk indicated to him that he understood the requirements, and would tell the supervisors at the mine about them.

Dickey testified that mine foreman Jones told him, referring to his foreman, that "they knew they were supposed to clean up as they mined." (sic) (Tr. I. 110) As a result of his inspection, Dickey issued a number of orders and citations.

II. Discussion

A. Order No. 7075382 (Docket No. PENN 99-232)

1. Violation of 30 C.F.R. § 75.400

Order No. 7075382 issued by Dickey alleges a violation of 30 C.F.R. 400 which, as pertinent, provides that “coal dust, ... loose coal and other combustible material, shall be cleaned up and not be permitted to accumulate in active working,”. Dickey’s testimony, corroborated in essential parts by Clark, set forth, based upon his observations and measurements, detailed dimensions and locations of coal and coal dust in cited areas. Further, according to Dickey, at various locations he touched the accumulated material, and it was dry. On the other hand, Steven M. Strange, a mine inspector for the Commonwealth of Pennsylvania, inspected the 6 North section on March 8, between 9:00 a.m. to 12:00 p.m. He indicated that mining was in progress at the time, and he described the area as being in very good condition. He indicated that his notes only set forth some spillage on the ribs. However, his testimony is not accorded sufficient weight to rebut or impeach Dickey’s testimony regarding the conditions observed by him, inasmuch as Dickey’s observations were made prior to the time the order he issued at issue, i.e. 9:10 a.m. In contrast, Strange indicated generally that his inspection was between the hours of 9:00 a.m. and 12:00 p.m. but did not specifically testify that any observations that he made were prior to the abatement of the cited conditions.

Daniel Jones, the Eighty-Four mine foreman who was on the section at issue at approximately 10:00 a.m., on March 10, observed that the No. 3 entry was “cleaned petty good” (Tr. II. 281), that in “intermittent areas” (Tr. II. 281) there was loose coal 3 inches by 3 inches by 6 inches where the rib meets the floor, that there was no float coal dust, and that the conditions at the No. 3 entry were normal in the cutting sequence. He also described damp chunks of coal on the floor of the 64 crosscut between the second and third entries, and maintained that these were not hazardous. He opined that no cleaning was necessary in the No. 3, entry or the 64 crosscut. He also opined that although there were accumulations near the fan, the material was only damp fine coal dust that did not present any hazard. He described conditions in the No. 2 entry at the 64 ½ crosscut as containing “intermittent” areas of coal 3 inches by 3 inches by 6 feet. However, he did not specifically contradict Dickey’s testimony regarding the specific accumulations he observed and measured. Similarly, neither Paul Havrilesko, a mechanic who worked the midnight to 8:00 a.m. shift on March 10, nor John Jakubic, the 6 North section foreman who also was present on the morning of March 8, adduced testimony of sufficient specificity to contradict Dickey’s testimony regarding the conditions observed and measured by him at specific locations in the area at issue. Neither have Harvilesko nor Jakubic nor any other of Respondent’s witnesses presented a different version of measured accumulations from that testified to by Dickey. Nor did any of Respondent’s witnesses contradict Dickey’s testimony regarding the specifics of the accumulations observed by him at the locations cited, at the time of his observations and measurements. Accordingly I find that Dickey’s testimony in these regards has not been contradicted or impeached. Thus, based upon Dickey’s testimony I find that as of the date and

time cited, there were extensive areas of accumulated coal dust in various locations in the cited areas. Some of these accumulations were dry. Further, based on Dickey's testimony, that was not impeached, contradicted or rebutted, I find that the cited areas contained ignition sources. Hence, I find within the context of this record, that the accumulations were hazardous. I thus find that Eighty-Four was in violation in Section 75.400 *supra*.

2. Significant and Substantial

A "significant and substantial" violation is described in section 104(d)(1) of the Mine Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 U.S.C. § 814(d)(1). A violation is properly designated significant and substantial "if based upon the particular facts surrounding the 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 825 (April 1981).

In *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

In order to establish that a violation of a mandatory safety standard is significant and substantial under *National Gypsum* the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard--that is, a measure of danger to safety--contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

In *United States Steel Mining Company, Inc.*, 7 FMSHRC 1125, 1129 (August 1985), the Commission stated further as follows:

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

As noted above, the record establishes a violation of a mandatory safety standard. Further, due to the extensiveness of the accumulations, and considering the fact that some of the accumulated coal dust was dry and constituted a combustible material, I find that the second element set forth in *Mathies supra* has been met.

Clete Stephan, an expert in the area of fire and explosion hazards, testified that, in general, in order for an explosion to occur five elements are necessary. He listed these as fuel, heat, oxygen, suspension of fuel, and confinement. The fact that men were working in the area without any oxygen supplement indicates that oxygen existed in sufficient quantities to sustain life. According to Stephan's uncontradicted testimony, this amount oxygen was sufficient to support combustion of methane or coal dust. Further, it is not contradicted that confinement was present as the underground mine presents a confined environment. Moreover, Eighty-Four did not rebut or contradict the testimony of Dickey regarding the significant liberation of methane at the mine, in the time period January through March 1999. Nor did Eighty-Four rebut, impeach, or contradict Dickey's testimony that shuttle car cables are "very likely" to be damaged and can cause a dust ignition when they are located around deposits of fine dry coal, and that the drill bits of the continuous miner, in normal operations, generate sparks. I thus find that the record establishes the existence of several ignition sources. Further, I find, based on Dickey's testimony, which was not impeached or contradicted, that he had observed dust in suspension. I thus find that all the necessary elements for an explosion to occur, as testified to by Stephan and not impeached or contradicted, were present. Hence, I find, taking into account the extensiveness of the accumulations, as well as the existence of all the elements necessary for combustion or explosion, the existence of a confluence of factors present which establish the third element of *Mathies supra*, i.e. a reasonable likelihood that the hazard contributed to i.e. a fire or an explosion, would result in an injury. (See *Texasgulf, Inc.*, 10 FMSHRC 498, 501 (1988)). Due to the nature of a fire or explosion and confined space, and given the presence of miners in the section, I find that there was a reasonable likelihood that a resultant injury would be of a reasonably serious nature. Thus, taking into account all the above I find that, within the framework of this evidence, it has been established that the violation was significant and substantial.

3. Unwarrantable Failure

In order to sustain a finding of a unwarrantable failure, it must be established by the Secretary that the violation resulted from Eighty-Four's "aggravated conduct". (*Emery Mining Corp.* 9 FMSHRC 1997 (1987)). Eighty-Four, in asserting that the Secretary has not met this burden, refers to the testimony of Jones that the accumulations were being removed "in an established systematic fashion". Eighty-Four refers also to the testimony of Jones that it had instituted a requirement for crews to clean up as they mined rather than waiting for the scraper crew as was the previous practice. Also, that the crews' foremen received training in this regard. Additionally, Eighty-Four refers to the testimony of Strange that, the condition of the section in question had been improving that the section was heading "big time, in the right direction since the mine had been sold." (Tr. II. 196).

I note that Jones indicated that the conditions in the No. 3 entry were normal in the cutting sequence, and that in his preshift examination he did not see any hazards to be reported. I also take cognizance of Jakubic's testimony that he had observed the loader cleaning in the No. 1 entry shoveling both ribs in the 64 ½ crosscut. He also explained the difficulty in additional shoveling

due to the confined area that existed in normal operations.

On the other hand, Eighty-Four did not contradict or rebut Dickey's testimony regarding the warning that he gave Eighty-Four's management on occasions prior to the date in question regarding accumulations. Further, importantly, I note the extensiveness of the accumulations, and according to the testimony of Dickey their obviousness. Within this context, and especially noting the previous warnings given to Eighty-Four, I find that it has been established that the violation herein was as the result of Eighty-Four's unwarrantable failure.

4. Penalty

For the reasons set forth above, (II. A (2)) *infra*, I find that the gravity of the violation was high. Also, for the reason set forth above (II. A (3)) *infra*, I find that the level of Eighty-Four's negligence was more than moderate. Taking into account the additional factors set forth in Section 110(i) of the Act as stipulated to the parties, I find that a penalty of \$3,500 is appropriate for this violation.

C. Order No. 7075384 (Docket No. PENN 99-232)

1. Violation of 30 C.F.R. § 360(b)

Order No. 7075384 alleges a violation of 30 C.F.R. § 75.360(b), which requires a person conducting a preshift examination, to: "...examine for hazardous conditions, ...". For the reasons set forth above, (II. A (3) *infra*,)) I have concluded that the record establishes that there existed hazardous accumulations when cited by Dickey. There is no evidence in the record that the full extent of these conditions was noted in the preshift report. Accordingly, I find that it has been established that Eighty-Four did violate Section 75.360(b) *supra*.

2. Significant and Substantial

All the factors discussed above, II A(2) *infra*, that provided a basis for the findings that the cited accumulations was a significant and substantial violation, apply with equal force to provide a basis for that a finding that the failure to preshift these conditions was similarly significant and substantial. Hence, essentially for the reasons set forth above, II (A)(2), *infra*, I conclude that the violation was significant and substantial.

3. Unwarrantable Failure

All the factors discussed above, II. A(2) *infra*, that provided a basis for the finding that the cited accumulations were the result of Eighty-Four's unwarrantable failure, apply with equal force to provide a basis for that a finding that the failure to preshift these conditions was similarly an unwarrantable failure. Hence, essentially, for the reasons set forth above II. A(3) *infra*, I find the violation herein of Section 360(b) *supra*, was as a result of Eighty Four's unwarrantable failure.

4. Penalty

For the reasons set forth above, II. A(4) *infra*, I find that the gravity of the violation was relatively high, and the negligence was more than moderate. Taking into account the remaining statutory factors stipulated to by the parties, I conclude that a penalty of \$3,500 is proper for this violation.

D. Order No. 7075383 (Docket No. PENN 99-222)

1. Violation of 30 C.F.R. § 403

Additionally, Dickey issued an order alleging a violation of 30 C.F.R. § 75.403 which requires, as pertinent, as follows: “...where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, ...”.

Dickey’s unimpeached and uncontradicted testimony establishes that he took rock dust samples from two locations. A dust sampling lab report for the two samples taken by Dickey indicates that the incombustible content of the samples to have been 45.3 and 41.5 respectively. I find no merit in Eighty-Four’s argument that these result should be invalidated because Dickey did not obtain representative band samples. Section 75.403, *supra* does not require such samples, nor has Eighty-Four cited any binding legal authority that requires this method of sampling to be performed in order to sustain a violation. I thus find, based upon Dickey’s testimony and the laboratory test results, that it has been established that Eighty-Four violated Section 75.403 *supra*.

2. Significant and Substantial

All the factors discussed above II. A (2) *infra* , that provided the basis for the finding that the cited accumulations was a significant and substantial violation, apply with equal force to provide a basis for a finding that the violation at issue was significant and substantial. Hence for the reasons set forth above, II. A (2) *infra* I find that the violation was significant and substantial.

3. Unwarrantable failure

There is no evidence in the record that Eighty-Four had received any warnings specifically regarding the incombustible content of rock dust. Nor is there evidence that it had been recently cited for this condition. There is no evidence in the record as to how long a period prior to Dickey’s inspection the incombustible content in the cited area had been not in compliance with Section 403, *supra*. Further, the record does not establish that Eighty-Four knew of this condition. Nor does it convincingly establish that Eighty-Four should reasonably have known of this condition. Dickey testified that the accumulations that he observed “...appeared not to have an incombustibility content of at least 65 percent”. He did not explain the basis for this opinion or

conclusion. Hence the record is devoid of sufficient evidence to predicate a finding that the objective conditions of the dust were such that a reasonably prudent experienced miner would have concluded that the rock dust combustibility content was not within the regulatory parameters. Within this context, I find that it has not been established that the violation was as a result of Eighty-Four's unwarrantable failure.

4. Penalty

For the reasons set forth above II. D (2), *infra* I find that the gravity of the violation was relatively high. Also, for the reason set forth above II. D(3), *infra* I find that the level of negligence was more than low. Considering these factors as well as remaining factors in Section 110(i) of the Act as stipulated by the parties, I find that a penalty of \$800 is appropriate.

E. Citation 7075381 (Docket No. PENN 99-222)

1. Violation of 30 C.F.R. § 75.370(a)(1)

Dickey testified that in his inspection he observed dust accumulations that were dry and dusty in the No. 1 entry that extended about 275 feet from the belt tail inby to the loader. He noted that dust went into the air when he walked in the area. Clark essentially corroborated Dickey's testimony in these regards. Dickey issued a citation alleging a violation of 30 C.F.R. § 75.370(a)(1) which requires the operator to follow its approved ventilation plan. Part 75.371(u) of the plan provides, as pertinent, that "section haulages are hosed down with water as needed."

Havrilesko testified that in the shift prior to Dickey's inspection, he watered the No. 1 entry commencing at the crusher and continuing inby for 125 feet. I find this testimony insufficient to contradict the testimony of Dickey, regarding his observations at the time he issued his citations. Further, although Harvilesko might have watered over a 125 foot distance Dickey observed dry conditions for 275 feet. Similarly, Jakubic testified that in his preshift examination of the No. 1 entry he noted that it was still damp. He also testified that he did not observe any dust in the air from shuttle car movement. This testimony is not sufficient to rebut the testimony of Dickey, as corroborated by Clark, regarding the conditions observed by him at the time that he made his observations. Accordingly, I accept Dickey's testimony, and based upon his testimony I find that Eighty-Four was in violation of its plan, and hence was in violation of Section 75.370(a)(1) *supra*.

2. Significant and Substantial

According to Dickey the dust that he cited was recognized by him be drill dust i.e., dust that came from the roof in the bolting process. According to Dickey, the rock in the immediate roof at the mine in question contains silica which is known to cause severe lung diseases. He also indicated that the cited area where he observed the dust in suspension was in an entry ventilated by the intake air which would eventually makes its way inby to the face, affecting all seven persons working at the face during the shift. None of this testimony was effectively impeached or

contradicted by any of Respondent's witnesses who were present at the time Dickey made his observations. Thus, I find that within the framework of this evidence adduced by Dickey, as well as for the reasons set forth above, II A(2) *infra*, that the violation was significant and substantial (see *Mathies, supra*).

3. Penalty

Inasmuch as the violative condition was reasonably likely to have led to severe lung disease, I conclude that gravity of the violation was relatively high. The level of Eighty-Four's negligence should be mitigated to some degree based upon the fact that the Eighty-Four's management made some efforts by assigning Harvlesko to water the area in the midnight shift prior to the time cited by Dickey. Indeed, Harvlesko testified that he watered approximately 125 feet in the entry at issue rib to rib for two hours during the midnight shift. Taking these factors into account as well as the remaining statutory factors as discussed above, I find that a penalty of \$450 is appropriate.

F. Citation Nos. 7059549, 7059552, 7059556, and 7076858 (Docket No. PENN 99-222)

Petitioner has filed a motion to approve a settlement agreement pertaining to these citations. A reduction in penalty from \$832.00 to \$165 is proposed. It also is proposed to vacate Citation No. 7076848. I have considered the representations and documentation submitted, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act, and find that the penalties proposed for these citations are appropriate.

ORDER

It is **ORDERED** that Order No. 7075383 shall be reduced to a section 104(a) citation that is not significant and substantial. It is further **ORDERED** that Citation No. 7076848 be **VACATED**. It is further **ORDERED** that within 30 days of this decision, Eighty-Four shall pay a total civil penalty of \$8,415.

Avram Weisberger
Administrative Law Judge

Distribution: (Certified Mail)

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