

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

February 23, 1995

JIM WALTER RESOURCES, INC., : CONTEST PROCEEDING
Contestant :
v. : Docket No. SE 94-126-R
: Order No. 3197626; 12/29/93
SECRETARY OF LABOR, :
MINE AND SAFETY AND HEALTH : No. 4 Mine
ADMINISTRATION (MSHA), : Mine ID 01-01247
Respondent :
: :
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. SE 94-306
Petitioner : A.C. No. 01-01247-04106
v. :
: Docket No. SE 94-407
JIM WALTER RESOURCES, INC., : A.C. No. 01-01247-04118
Respondent :
: No. 4 Mine
: :
: Docket No. SE 94-384
: A.C. No. 01-01322-03949
: :
: No. 5 Mine
: :
: Docket No. SE 94-383
: A.C. No. 01-01401-04000
: :
: Docket No. SE 94-389
: A.C. No. 01-01401-03998
: :
: Docket No. SE 94-390
: A.C. No. 01-01401-03999
: :
: No. 7 Mine
: :
SECRETARY OF LABOR, HEALTH : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. SE 94-446
Petitioner : A.C. No. 01-01247-04126-A
: :
CARL W. HARLESS, employed by : No. 4 Mine
JIM WALTER RESOURCES, INC., :
Respondent :

	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 94-453
Petitioner	:	A.C. No. 01-01247-04125-A
v.	:	
	:	No. 4 Mine
WILLIAM E. WILSON, employed by	:	
JIM WALTER RESOURCES, INC.,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 94-454
Petitioner	:	A.C. No. 01-01247-04127-A
v.	:	
	:	No. 4 Mine
HILBURN HULSEY, employed by	:	
JIM WALTER RESOURCES, INC.,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 94-511
Petitioner	:	A.C. No. 01-01247-04124-A
v.	:	
	:	No. 4 Mine
C. DON SIMS, employed by	:	
JIM WALTER RESOURCES, INC.,	:	
Respondent	:	

DECISION

Appearances: William Lawson, Esq., Office of the Solicitor,
U.S. Dept. of Labor, Birmingham, Alabama,
for Petitioner;
J. Alan Truitt, Esq., Maynard, Cooper & Gale,
Birmingham, Alabama, for Individual Respondents;
R. Stanley Morrow, Esq., Jim Walter Resources,
Inc.; Brookwood, Alabama, for Contestant and
Respondent.

Before: Judge Barbour

These cases are brought pursuant to Sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act or Act), 30 U.S.C. ' 815, 820. In the contest proceeding, Jim Walter Resources Inc. (Jim Walter) challenges the validity of an order of withdrawal issued at its No. 4 Mine. In the civil penalty proceedings, the Secretary of Labor (Secretary), on behalf of the Mine Safety and Health Administration (MSHA), seeks the

assessment of penalties against Jim Walter and three individuals for alleged violations that occurred at the No. 4 Mine, No. 5 Mine and No. 7 Mine.

Pursuant to various orders of consolidation and notices of hearing, the matters were heard in Hoover, Alabama.

At the commencement of the hearing, counsel for the Secretary stated that the parties had settled all of the proceedings, with the exception of Docket No. SE 94-126-R and its associated civil penalty proceeding, Docket No. SE 94-407 (Tr. 11-12). Counsels explained the details of the settlements and I indicated that I would approve the settlements when I decided the contested cases (Tr. 18).

DOCKET NOS. SE 94-126-R and SE 94-407

In Docket No. SE 94-126-R, Jim Walter challenges the validity of Order No. 3197626. The order was issued pursuant to Section 103(k) of the Act (30 U.S.C. ' 813(k)). Section 103(k) provides that if an accident occurs, an inspector, when present, may issue such orders as he or she deems appropriate to insure the safety of any person in the mine.

The order was issued by MSHA Inspector Gerald Tuggle on December 29, 1993. It states:

An accident to the hoisting equipment located in the production shaft has happened and interfered with the use of the equipment for more than thirty minutes. This order is issued until an investigation can be completed to assure the safety of the miners or persons in the production shaft (Gov. Exh. 1).

Tuggle also issued Citation No. 3197627, pursuant to Section 104(a) of the Act (30 U.S.C. ' 814(a)). The citation charges Jim Walter with a violation of 30 C.F.R. ' 50.10. This mandatory standard requires an operator to "immediately contact" the MSHA district or subdistrict office having jurisdiction over its mine, "[i]f an accident occurs."

The citation states:

A reportable accident [occurred] to the hoisting equipment in the production shaft in which the hoisting equipment was out of service for more than thirty minutes and MSHA was not notified immediately. The accident happened at 11:08 p.m. on December 28, 1993 and MSHA was notified on December 29, 1993 at approximately 8 a.m. (Gov. Exh. 2).

The Secretary proposed a civil penalty of \$500 for the alleged violation.

STIPULATIONS

The parties stipulated that:

1. The Commission has jurisdiction over the proceeding.
2. The hoisting equipment referenced in the order and the citation went out of service at 11:08 p.m. on December 23, 1993.
3. MSHA was not notified by Jim Walter that the hoisting equipment had gone out of service until 7:00 a.m. on December 29, 1993.
4. The hoisting equipment was put back into service at 9:30 a.m. on December 29, 1993 (Tr. 20-21).

THE SECRETARY'S WITNESS

GERALD TUGGLE

Inspector Tuggle was the Secretary's only witness. Tuggle has been a MSHA inspector for more than 13 years. During this time he has inspected both underground and surface coal mines, including the underground mines operated by Jim Walter.

Tuggle testified that coal at the No. 4 Mine is transported by conveyor belts from the production sections to a location at the bottom of a shaft where a hoisting system is used to raise the coal to the surface (Tr. 23). The hoisting system includes two skips. Tuggle described the skips as large containers. The skips are attached to wire ropes and a hoisting mechanism on the surface raises the skips from the production shaft to the surface. Tuggle explained that the skips operate alternatively. While one skip is being loaded at the bottom of the shaft, the other skip is being emptied on the surface (Tr. 25). When a loaded skip has ascended the shaft and is at the top of the shaft head frame, the skip trips a switch and a door on the bottom of the skip slides open. The coal falls onto a chute. The chute leads to a conveyor, which carries away the coal (Tr. 28).

Skips are the sole means by which coal is removed from the No. 4 Mine. Tuggle estimated that a loaded skip holds approximately 22 tons of coal (Tr. 26). The skips move up and

down the production shaft at the rate of approximately 900 feet per minute. The shaft is approximately 2,000 feet deep (Tr. 27). The skips are used during every production shift (Tr. 29).

The production shaft is used also as an emergency exit, in that it contains a hoist used for emergencies only. The emergency hoist can carry approximately 10 miners to the surface (Tr. 27).

Tuggle testified that on December 29, he was sent to the mine by his supervisor (Tr. 30, 111). Tuggle was instructed to investigate an accident that involved the skip hoisting equipment.

Upon arriving at the mine, Tuggle discussed the situation with Frankie Lee, a member of Jim Walter's mine management team. Lee told Tuggle the hoist had ceased operation around 11:00 p.m. the previous evening, that repairs had been made, and that the hoist was back in use (Tr. 104, 112). Following the discussion, Tuggle issued the contested Section 103(k) order (Tr. 114).

As Tuggle remembered, Lee told him that on December 28, toward the end of the 4:00 p.m. to 11:00 p.m. shift, the skips were shut down for lack of coal. The shift changed at 11:00 p.m., and at about that time coal was delivered to the bottom of the production shaft. Shortly after 11:00 p.m., the control man at the bottom of the shaft called the telephone operator and reported that power to the hoist had gone off. An alarm also sounded on the surface to indicate that the hoist had stopped.

Management personnel went to the surface hoist house to determine what was wrong. The hoist house, which contains the hoist motor and the hoist drum, was full of smoke. The personnel opened all of the windows and doors. The hoist system uses four metal hoist ropes. There are four grooves on the hoist drum into which the ropes wind and unwind. Each groove has a neoprene wearing strip. The strips, which are changed periodically, help to maintain proper tension on the ropes. When the smoke cleared, the personnel could see that the metal hoist ropes had been slipping on the wearing strips. Friction caused by the slipping ropes had heated the strips to the point where they had begun to melt and to smoke (Tr. 31-32).

The strips have to wear equally in order for the skips to run smoothly (Tr. 38). Because of the uneven wear caused by the slipping ropes, the neoprene strips had to be regrooved (Tr. 35, 38, 40, 44).

In addition to the problems on the surface, management personnel found that the loaded skip had become stuck at the bottom of the shaft. The skip was wedged into the wooden frame that cradles the skip. Using a torch, mine personnel severed several

bolts and cut away part of the skip (Tr. 34, 35). This freed the skip so that it could be raised to the surface (Tr. 37).

Once the skip was raised out of the wooden frame, personnel found that the skip control line (a wire cable that stretches across the bottom of the shaft) had been broken (Tr. 34, 39). When the control line breaks, the hoisting system shuts down (Tr. 34). The control line had to be replaced before the system could be put back into service (Tr. 39-40).

Tuggle also was informed that before the hoisting system ceased to function, Jim Walter had removed from the system a device that shut the system down if the RPMs of the drum were "out of sync" with the speed of the ropes. The device was removed because lubrication on the ropes caused the device to function erratically and to shut the system down in the middle of a skip's ascent or descent (Tr. 41). Tuggle believed Jim Walter concluded it was hazardous to have a skip traveling at 900 feet per minute come to a sudden and totally unexpected stop (*id.*). In Tuggle's opinion, if the device had been in place, it would have "picked up the hoist drum turning and the cables ... not moving and it would [have] shut the system down, which would have prevented the melting of the wearing strips" (Tr.42).

Tuggle was asked about previous incidents involving skips at the No. 3 Mine. (The No. 3 Mine, which is not the site of any of the citations and orders at issue in these cases, is owned and operated by Jim Walter.) He stated that in one instance the failure of a control switch had caused a skip to hit the head frame, the ropes had broken, and the skip had fallen down the shaft. As a result, Tuggle believed the No. 3 Mine was unable to operate for three to four weeks (Tr. 45).

Tuggle stated that he issued the Section 103(k) order in part to make certain the skips and ropes had not been damaged to the extent that they might fall down the shaft and injure miners at the bottom (Tr. 45). Tuggle stated that he was concerned about the safety of miners who traveled near the shaft and miners who might have had to use the emergency hoist (Tr. 46, 116-117). Tuggle explained that if the skips and cables had fallen down the shaft, the damage caused could have extended beyond the shaft bottom and endangered miners who might be in adjacent areas (Tr. 117). Tuggle stated he wanted "[t]o preserve the site ... [so that MSHA] could investigate it to see if it was safe or not" (Tr. 53, See also Tr. 105).

When asked why he issued the order after everything apparently was back to normal, Tuggle replied, "[to] shut it down to where I could investigate and make sure that it was safe for miners that were in the area and underground" (Tr. 68). Tuggle acknowledged that when he issued the order at 11:05 a.m., Jim Walter had already

advised him that the defects in the hoisting system had been corrected and that the hoist had been back in service for approximately one hour and a half (Tr. 68). As a result of his investigation, Tuggle found that all necessary repairs in fact had been made and he concluded that the hoisting system was safe to operate (Tr. 69).

Tuggle testified that MSHA Inspector William Zimmerman had gone to the mine around 7:00 a.m. on December 29, 1993. Zimmerman was told that the hoist had been inoperative all night. This was the first time MSHA was informed about the hoist being inoperative. Zimmerman then reported the incident to MSHA and Tuggle was sent to the mine to investigate. Tuggle did not know why Zimmerman had not issued a Section 103(k) order (Tr. 66).

Tuggle also issued Citation No. 3197627. He did so because he believed that Section 50.10 requires an operator to "immediately notify" MSHA when an "accident" occurs. In Tuggle's opinion, what had happened to the hoisting system was an "accident." (Tr. 48-49).

Tuggle stated that the regulations require the reporting of all hoisting accidents which result in a hoist being out of service for over thirty minutes, unless the hoist is out of service for routine maintenance (Tr. 70-71). He stated, "[i]f it's mechanical failure, which damages the hoisting system for more than 30 minutes ... it needs to be investigated [I]f the mechanical damage is due to an accidental breakdown of the components ... it needs to be investigated. But if it's due to normal wear then, no, I don't think it needs to be investigated" (Tr. 93).

According to Tuggle:

The accident that happened to the hoisting system was, first, the skip was either overloaded or rain on the lubrication on the hoist ropes caused the drum to slip which, in turn, created friction between the liners and the ropes which, in turn, damaged the liners that it had to be relined which, in turn, something fell in the bottom and broke the control wires.

All of these things right here were different results of the accident which created the hoist being down more than 30 minutes (Tr. 96).

Although Tuggle cited Jim Walter for a violation of Section 50.10, he was unaware of anything in the MSHA Program Policy Manual interpreting the standard (Tr. 81).

Originally, Tuggle cited the violation in an order of withdrawal issued pursuant to Section 104(d)(2) of the Act (30 U.S.C. ' 814(d)(2)). Subsequently, he modified the order

to a Section 104(a) citation because inspectors "can only issue unwarrantable violations on health and safety standards [and] Part 50 is not a health and safety standard. It's more of a record type thing." (Tr. 47).

Tuggle found the company's negligence to be "high" (Tr. 77). He explained that Jim Walter had knowledgeable people in management positions. They had experience working with hoists and should have known to report the accident immediately (Tr. 56).

Tuggle did not find the violation to be a significant and substantial contribution to a mine safety hazard. He did not believe the violation presented a likelihood of injury or illness (Tr. 57; Gov. Exh. 2). He acknowledged that no miners were injured by the accident (Tr. 61).

With respect to the number of miners endangered, Tuggle stated that normally one person is in the control room at the bottom of the shaft (Tr. 61, 107). However, he believed that the persons most subject to danger were miners, such as firebosses, supervisors and pumpers, who traveled occasionally along the outer edge of the shaft to reach other areas of the mine (Tr. 61, 108). Tuggle estimated that at least one miner would travel daily through the area (Tr. 108). Tuggle did not know if any miners actually were placed in jeopardy by the accident on December 28, 1993. He emphasized that he was not on hand when the damage to the equipment occurred (Tr. 62). He also acknowledged that there were guardrails around the shaft opening to keep miners from walking into the bottom of the shaft (Tr. 115).

JIM WALTER'S WITNESSES

The company called no witnesses, but relied upon its cross examination of Tuggle (Tr.119).

VALIDITY OF ORDER NO. 3197626

Section 103(k) authorizes a mine inspector, in the event of an accident occurring at a coal or other mines, to "issue such orders as he deems appropriate, to insure the safety of any persons" in the mine (30 U.S.C. ' 813(k)(emphasis added)). MSHA's regulations at 30 C.F.R. Part 50 provide several definitions of an "accident." The relevant definition for purposes of this case is the definition found in section 50.2(h)(11). It defines an accident as "[d]amage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with the use of the equipment for more than thirty minutes."

Commission Administrative Law Judge George Koutras has summarized the nature of Section 103(k) orders and the wide discretion the section affords inspectors:

Section 103(k) orders are typically issued by MSHA inspectors to secure the scenes of accidents, to insure the continued safety of mine personnel, to preserve evidence, and to facilitate the investigation of accidents....

Section 103(k) authorizes an inspector to issue such orders as he deems appropriate to insure the safety of miners. Thus, the issuance of such an order by an inspector is discretionary. If an inspector believes that an operator has the situation well in hand, and that the safety of miners is insured, he need not issue any orders at all. On the other hand, if the inspector is in doubt, or has insufficient information to enable him to make a judgement as to the severity of the situation, or the hazard exposure to miners, ... he must be afforded the latitude to act according to the wisdom of his discretion and experience ... [I]n order to successfully respond to such situations, an inspector must be able to do what he believes is appropriate according to the facts as they are known to him, or as they appear to exist, at the time he makes the decision to act....If the order was routinely issued, without regard to the safety or health of miners, then ... it should be vacated. If, on the other hand, it was issued in order to insure the safety or health of the miners, it should be affirmed (Southern Ohio Coal Co., 13 FMSHRC 1783, 1798-99 (November 1991) (citations omitted) (emphasis in original)).

In analyzing Tuggle's use of his discretionary authority to invoke section 103(k), it is important to keep in mind what Tuggle already knew when he arrived at the mine on December 29. He had inspected Jim Walter's underground coal mines for a number of years and he was aware that an accident at the No. 3 Mine had resulted in a skip and hoist ropes falling down the production shaft (Tr. 45). He knew that miners at the No. 4 mine occasionally were required to travel adjacent to the bottom of the production shaft (Tr. 116-117). He also knew that at the No. 4 mine, a hoist used to carry mine personnel in the event of an emergency, shared the production shaft with the skip hoist.

Tuggle testified repeatedly that he issued the Section 103(k) order so that he could "investigate and make sure that it was safe for miners" (Tr. 68; See also Tr. 53, 97-98, 116-117). Given what he knew about the prior accident and the possible exposure of miners to the inherent dangers and what he learned from Lee regarding the events that occurred when the skip became stuck at the bottom of the shaft, especially the slipping hoist rope, the melting of the neoprene wearing strips and the broken control line, I conclude that it was entirely reasonable for Tuggle to halt operations. Tuggle could then investigate and make certain

repairs had been adequate to insure safety of the miners. The fact that Tuggle's investigation resulted in a finding that everything was safe does not invalidate his decision to issue the order. The question is the reasonableness of his decision at the time he made it (See Homestead Mining Co., 4 FMSHRC 1829, 1840 (October 8, 1982) (ALJ Vail)). Tuggle was responsible for determining whether the hoist had been properly repaired and, if not, for protecting miners from resulting safety hazards. This was a considerable responsibility. Therefore, it is natural that any question in his mind would have been resolved on the side of safety (See M.A.E. West, Incorporated, 10 FMSRHC 813, 842 (June 1988) n. 5 (ALJ Koutras)).

I conclude that Zimmerman's failure to issue a Section 103(k) order does not invalidate Tuggle's enforcement effort. In some circumstances, the lack of enforcement action by one inspector might reflect upon the reasonableness of action initiated by another inspector. This is not such a situation. As I have already found, the evidence overwhelmingly supports the proposition that given what he knew when the order was issued, Tuggle's desire "to make sure that it was safe for miners" was eminently reasonable (Tr. 68). Therefore, the order must be affirmed.

THE VIOLATION OF SECTION 50.10

In deciding whether a violation occurred, I must look to the words of the pertinent standards. If the words are straight forward and apply to specifically described situations as in this instance, I need not go beyond the regulations themselves.

Section 50.10 requires that "[i]f an accident occurs, an operator shall immediately contact ... MSHA." As previously noted, an "accident" is defined as "[d]amage to hoisting equipment in a shaft ... which endangers an individual or which interferes with use of the equipment for more than thirty minutes" (30 C.F.R. ' 50.2(11)). The regulation does not distinguish between hoisting equipment used to transport miners and hoisting equipment used to transport coal and/or materials. Moreover, the applicable definition of "accident" is disjunctive -- "which endangers an individual or which interferes with use of the equipment" (30 C.F.R. ' 50.10(h)(11)). (I note that although Tuggle was unaware of an official interpretation of Section 50.10 (Tr. 81), Program Policy Letter No. 94-III-2 indicates that MSHA regards damage to hoisting equipment used solely to transport equipment or material, and which interferes with use of the equipment for more than thirty minutes, to be reportable. "Reporting of Damaged Hoisting Equipment" (10/7/94).)

Tuggle's undisputed testimony confirms that there was damage to the hoisting equipment, in particular, damage to the neoprene wearing strips and to the control line that caused the hoisting equipment to be out of service for more than thirty minutes. This

was an "accident" within the meaning of Section 50.2(h)(11). Moreover, even if, as Jim Walter argues, the regulations only pertain to situations where miners are exposed to hazards, I would still find there was an accident within the meaning of the definition. I credit fully Tuggle's opinion that the defective production hoist could have exposed those who traveled occasionally at the bottom of the shaft to danger. This being the case, the incident was reportable as an "accident."

Having found there was an "accident," the question is, did Jim Walter "immediately contact" MSHA? It is clear that the condition of the hoist was not reported until many hours after the damage occurred. Jim Walter offers no excuse for the delay. The fact that management personnel incorrectly believed the regulation did not apply cannot excuse their failure to take the "prompt, vigorous" action required by the standard. Consolidation Coal Company, 11 FMSHRC at 1938. I therefore find the violation existed as charged.

CIVIL PENALTY CRITERIA

GRAVITY

Tuggle did not believe that injuries to miners were reasonably likely because of the violation (Tr. 52). There was no evidence that miners were placed in danger by the accident (Tr. 62). While I suspect an argument could be made that a violation of the "immediate contact" requirement of section 50.10 is serious in and of itself, it was not made here. I conclude, therefore, that the violation was not serious.

NEGLIGENCE

Tuggle found mine management to have been highly negligent in failing to report the accident. In his view, management personnel were experienced and should have known of their obligation to contact MSHA (Tr. 77). At the hearing, counsel for the Secretary pointed to the fact that Jim Walter obviously knew of the reporting requirement because it had contacted MSHA when the skip fell down the shaft at the No. 3 Mine (Tr. 124).

Negligence is the failure to exercise the care required under the circumstances. The relevant circumstances here included the fact that not only did Jim Walter failed to act immediately, but that eight or nine hours passed before MSHA was contacted. Moreover, I agree with counsel that the accident at the No. 3 Mine should have heightened Jim Walter's awareness of the requirements of the standard. I conclude therefore that Tuggle's negligence finding was warranted.

HISTORY OF PREVIOUS VIOLATIONS

The print-out of the mine's prior assessed violations lists a large number of such violations. However, the overall number of applicable previous violations is counter balanced by the fact that there were no prior violations of section 50.10 (Gov. Exh. 4). I conclude that the applicable history of previous violations is such that could either increase or decrease the penalty assessed.

SIZE OF BUSINESS

Jim Walter is a large operator and the No. 4 Mine is a large mine (Proposed Assessment, Docket No. WEVA 94-407).

ABILITY TO CONTINUE IN BUSINESS

No evidence was offered that any penalty assessed will affect Jim Walter's ability to continue in business and I conclude it will not.

GOOD FAITH ABATEMENT

Tuggle indicated that at the time the citation was issued, the company had already abated the violations by notifying MSHA (Gov. Exh. 2).

CIVIL PENALTY

When I inquired why the violation was subject to a special assessment under the provisions of 30 C.F.R. Part 100, counsel for the Secretary stated that the violation was assessed when it was a Section 104(d)(2) order, prior to the order's modification to a Section 104(a) citation (Tr. 57-58).

Section 100.5(b) provides that the Secretary may elect to specially assess a violation when it is due to the unwarrantable failure of the operator to comply. The unwarrantable finding was eliminated when the order was modified to a section 104(a) citation. Counsel stated, however, that the Secretary continued to believe the proposed penalty of \$500 was justified by Tuggle's "high" negligence finding (Tr. 57-58).

Section 100.5(h) provides the Secretary may invoke the special assessment provisions in cases of "an extraordinarily high degree of negligence" (emphasis added). I can not conclude that the lack of care exhibited by Jim Walter in this instance was extraordinarily high.

In view of this and the other civil penalty criteria findings, I find the proposed penalty to be excessive. Therefore, I will assess a civil penalty of \$300.

SETTLEMENTS

SE 94-407

<u>Citation/ Order No.</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
3182293	10/28/93	75.370(a)(1)	\$5,200	\$3,500

(Tr. 139-140)

SE 94-306

<u>Citation/ Order No.</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
2807227	08/18/93	75.220	\$8,500	\$5,500
3182263	10/28/93	75.400	\$1,610	\$ 793
3182266*	11/15/93	75.370(a)(1)	\$1,298	\$ 300
3182267	11/15/93	75.400	\$1,298	\$ 793
3183390*	11/15/93	75.503	\$1,610	\$ 200
3183399*	11/16/93	77.410	\$ 506	\$ 150
3183400	11/17/93	77.202	\$ 595	\$ 595
3183512*	11/18/93	75.400	\$ 506	\$ 150
3183515*	11/18/93	75.400	\$ 793	\$ 200
2807244*	11/30/93	75.370(a)(1)	\$1,298	\$ 300
2807499*	11/30/93	75.1403	\$1,610	\$ 300
2807245*	12/06/93	75.370(a)(1)	\$1,610	\$ 300

(Tr. 140-147) (*The Secretary agrees to delete the S&S findings.)

DOCKET NO. SE 94-383

<u>Order/ Citation</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
3182598	12/08/93	75.203(e)	\$ 595	\$ 200
3182235*	12/09/93	75.1106-3(a)(3)	\$ 288	\$ 100
3182605	12/10/93	75.370(a)(1)	\$ 431	\$ 150

(Tr.147-149) (*The Secretary agrees to delete S&S finding.)

DOCKET NO. SE 94-384

<u>Order/ Citation</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
3184808	06/24/93	50.20	\$ 50	\$ 50
3195772*	11/09/93	75.380(g)	\$1,155	\$ 400

(Tr. 149-150) (*The Secretary agrees to delete the S&S finding.)

DOCKET NO SE 94-389

<u>Order/ Citation</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
318273	05/05/93	75.202(b)	\$2,300	\$1,000
3182533	11/04/93	75.340	\$ 793	\$ 309
3182534	11/04/93	75.400	\$ 793	\$ 309
3183388*	11/04/93	75.503	\$1,019	\$ 200
3182537	11/08/93	75.203(e)	\$ 309	\$ 309

(Tr. 150-152) (*The Secretary agrees to delete the S&S finding.)

DOCKET NO. SE 94-390

<u>Order/ Citation</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
3182539	11/09/93	75.220	\$ 288	\$ 288
3182543	11/09/93	75.220	\$ 288	\$ 288
2182545	11/09/93	75.400	\$1,019	\$ 309
3182549*	11/10/93	75.333(b)(3)	\$1,019	\$ 250
3102551*	11/12/93	75.370(a)(1)	\$ 431	\$ 125
2182553*	11/12/93	75.1713-7(a)(3)	\$ 288	\$ 50
3182227	11/15/93	75.400	\$ 309	\$ 100
3182554	11/16/93	75.400	\$ 595	\$ 595
3182555*	11/16/93	75.400	\$ 595	\$ 150
3182556	11/16/93	75.1719-1(a)	\$ 288	\$ 288

(Tr. 152-156) (The Secretary agrees to delete the S&S finding.)

DOCKET NO. SE 94-446

<u>Citation/ Order No.</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
2807227	02/18/93	75.220	\$ 300	\$ 200

(Tr. 13-18)

DOCKET NO. SE 94-453

<u>Citation/ Order No.</u>	<u>..Date</u>	<u>30 C.F.R. '</u>	<u>Assessment</u>	<u>Settlement</u>
2807227	02/18/93	75.220	\$3,500	\$ 200

(Tr. 13-18)

APPROVAL OF THE SETTLEMENTS

After consideration of the information in support of the settlements provided on the record by counsels, I find that the proposals are reasonable and in the public interest. Pursuant to 29 C.F.R. ' 2700.31, the settlements are **APPROVED**.

WITHDRAWAL OF PENALTY PETITIONS

DOCKET NO. SE 94-454 and DOCKET NO. SE 94-511

Counsel for the Secretary moved to withdraw the Secretary's petitions for assessment of civil penalty in two of the individual civil penalty cases on the grounds that the Secretary could not establish that the Respondents knowingly violated the standards alleged (Tr. 12-13). The Commission's rules provide that a party may withdraw a pleading at any stage of a proceeding with the approval of the judge (29 C.F.R. ' 2700.11). The motion is **GRANTED**.

ORDER

In Docket No. SE 94-126-R, Order No. 3197626 is **AFFIRMED** and the proceeding is **DISMISSED**.

In Docket No. SE 94-407, Citation No. 3197627 is **AFFIRMED** and Respondent, Jim Walter, is **ORDERED** to pay a civil penalty of \$300 for the violation of section 50.10.

In Docket Nos. SE 94-407, SE 94-306, SE 94-383, SE 94-384, SE 94-389 and SE 94-390, Respondent, Jim Walter, is **ORDERED** to pay civil penalties as agreed to in the settlements. The Secretary is **ORDERED** to modify the referenced citations and orders by deleting the S&S findings.

In Docket No. SE 94-446, Respondent, Carl W. Harless, is **ORDERED** to pay a civil penalty of \$200 for the violation of section 75.220.

In Docket No. SE 94-453, Respondent, William E. Wilson, is **ORDERED** to pay a civil penalty of \$200 for the violation of section 75.220.

Payment shall be made to MSHA within 30 days of the date of this decision, and upon payment, the referenced proceedings are **DISMISSED**.

Finally, civil penalty proceedings Docket Nos. SE 94-454 and SE 94-511 are **DISMISSED**.

David F. Barbour
Administrative Law Judge

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