FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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May 22, 1996

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 95-339
Petitioner	:	A.C. No. 01-01401-04078
v.	:	
	:	Docket No. SE 95-344
JIM WALTER RESOURCES,	:	A.C. No. 01-01401-04080
Respondent	:	
	:	Docket No. SE 95-367
	:	A.C. No. 01-01401-04086
	:	
	:	Docket No. SE 95-369
	:	A.C. No. 01-01401-04089
	:	
	:	Docket No. SE 95-476
	:	A.C. No. 01-01401-04103
	:	
	:	No. 7 Mine
	:	
	:	Docket No. SE 95-358
	:	A.C. No. 01-01322-04013
	:	
	:	No. 5 Mine

DECISION

Appearances: William Lawson, Esq., U.S. Department of Labor, Office of the Solicitor, Birmingham, Alabama, for the Petitioner;
R. Stanley Morrow, Esq., Jim Walters Resources, Inc., Brookwood, Alabama, for the Respondent.

Before: Judge Weisberger

Statement of the Case

These cases are before me based upon several Petitions for Assessment of Civil Penalty

filed by the Secretary (Petitioner) alleging violations by Jim Walter Resources (Respondent) of various mandatory safety standards set forth in Title 30 of the Code of Federal Regulations. Pursuant to Notice, Docket No. SE 95-369 was heard in Hoover, Alabama on January 17 and 18, 1996, and February 27, 1996. The parties settled four of the six orders at issue,[1] and the two remaining orders were litigated.

The parties each waived the opportunity to file a post hearing brief, and in lieu thereof, presented a closing oral argument.

Findings of Fact and Discussion

I. Order No. 3192511

A. Petitioner=s Case

On April 10, 1995, at approximately 1100 p.m., Keith Plylar, Chairman of the UMWA safety committee, performed a bimonthly examination of the East A and B belts. At approxi- mately 1230 a.m., he observed float coal dust in the air, several Abad@ top and bottom rollers (Tr. 24), and several bottom rollers turning in coal on the floor[2]. He indicated that the belt was not aligned, the tail roller was running in an accumulation of coal that was twenty four to thirty six inches deep, and coal dust was being blown in the air. Plylar also noted that the belt was cutting into the belt frames[3] which were hot to the touch. He also noted accumulations under the rollers, and on the roof and ribs of the entry.

Plylar indicated that the conditions that he observed presented a hazard in that friction could be created, and additional coal dust could be thrown into the air.

Plylar opined, based upon fifteen years experience working underground in coal mines, that the amount of the accumulations of coal that he observed, and its black color indicated a Acontinuing buildup@ over a A[m]atter of days@ (Tr. 33). In this connection, he noted that the coal accumulations varied between three inches and twenty-

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[1]On February 27, 1996, Respondent, with the concurrence of Petitioner, presented motions to approve settlements regarding these four orders, and the remaining docket numbers (infra, III and IV).

[2]The rollers are metal and are approximately four feet long. Sets of three top rollers were located about five feet apart along the length of the belt. A single bottom roller was located about every ten feet.

[3]The terms Abelt frames,@ Abelt stands,@ and Abelt structures,@ are all synonymous.

four inches deep, and extended for the entire length of the belt from the header inby to the tailpiece. He opined that due to the extensive amount of float dust on the roof, ribs, and floor, the material had not accumulated Awithin a matter of hours@ of his examination (Tr. 79).

At 1:45 a.m., Plylar pointed out the above conditions to Bobby Taylor, Jim Walters Safetyman, and asked him to shut down the belt in order to clean it, as there was a Asevere hazard@ to miners working near the belt line (Tr. 24). According to Plylar, Taylor told him that he agreed that the condition was bad enough to shut down the belt, but that he did not have any authority to do so. Plylar suggested that Taylor get in touch with someone who did have this authority. Taylor called Trent Thrasher the shift foreman. Plylar indicated that after Taylor talked to Thrasher, he (Taylor) informed him (Plylar) that A. . . they didn=t have anyone to put on this belt line at this time@ (Tr. 26).

Plylar indicated that on Aseveral occasions,@ (Tr. 45) he had observed Asmoldering@ or Aglowing spots@ (Tr. 43, 44), and smoke on the belt line. He opined that these conditions were caused by the belt not being aligned properly, and the belt

Acutting into the belt stands@ (Tr. 45). Also he indicated that, Apretty frequently@, (Tr. 45) miners had reported fires to him that they had seen in the mine.

Plylar came out of the mine at approximately 4:30 a.m. At that time, no one was cleaning the belt line. Plylar called the MSHA office at approximately 7:00 a.m., to report the conditions that he had observed, and to request a section 103(g) inspection.

John Thomas Terbo, an MSHA inspector, testified for Petitioner. On April 11, 1995, at approximately 9:45 a.m., Terbo inspected the East B-belt in the presence of Larry Morgan, the day shift mine foreman and Larry Spencer, the union representative. He indicated that he commenced his examination of the outby end of the B-belt, and continued inby down to the tail roller, a distance of approximately 5,000 feet. Terbo indicated that to the best of his recollection the belt was running when he arrived at the site.[4] According to Terbo, he observed coal dust in the atmosphere. Also, he noted that the floor, ribs, and roof, including the cross cuts, were black for the entire length of the belt. He indicated that since normally

[4]Keith Wayne Ely, an MSHA supervisory ventilation specialist, indicated that at 10:07 a.m., the A-belt was not running. He indicated that, in general, if the A-belt is not in operation, then the B-belt is not in operation. It is not necessary to make a finding as to whether the belt was operating, when the order at bar was issued. The issues presented by the order will be resolved based on a consideration of continued normal operations which includes activation of the belt line.

these areas are white due to the presence of rock dust, the black color was Avery obvious@ (Tr. 94). He also observed an accumulation of coal dust on the starter box. Terbo testified that there was float dust, black in color, on top of all components inside the starter box.[5] He noted that opening and closing of electrical contacts in the box, which occurs when power to the belt is turned on and off, can cause arcing. He opined that the coal dust A[a]bsolutely@ did not result from spillage (Tr. 100).

According to Terbo, the tail roller and Anumerous@ (Tr. 101) metal belt rollers were turning in coal dust on the floor. He indicated that the eventual grinding of the coal dust caused by these conditions can result in the production of fine dust which could become airborne, and provide fuel for a fire. Terbo noted that some rollers were hot, and the belt stands were Aextremely hot@ (Tr. 106). Also, the belt was cutting into the stands, and there were accumulations on the stands. Terbo indicated that with continued normal operations, it was Ahighly likely@ that these conditions would contribute to a fire hazard (Tr. 105). Terbo opined that, in the event of a fire, injuries to miners at the face as a result of smoke inhalation would have occurred, inasmuch as the belt entry was ventilated by intake air which flowed inby to the face.

Access to the face was by way of vehicles that traveled on a track located next to, and parallel to the belt. According to Terbo, A[i]t was very obvious if you traveled this track entry, and supervisors travel this track entry on a shift by shift basis, that you could see these conditions were there@ (Tr. 111). He also noted that the accumulations extended 5,000 feet, and that Athese conditions@ (Tr. 111), were noted in the fire boss book Adating back to April 4th of >95" (Tr. 109). He opined that the accumulations he observed did not occur in one day, and that they had existed A[f]or days@ (Tr. 115). He based this opinion upon the extent of the totally black accumulations that extended for 5,000 feet, and covered the roof, ribs, and floor.

Terbo issued an order alleging a violation of 30 C.F.R. ' 75.400 which provides that Acoal dust, . . . shall be cleaned up and not be permitted to accumulate in active workings, . . .@

B. Respondent=s Case

David Gable, the assistant mine foreman at the No. 7 Mine, has sixteen years experience as a miner. He did not observe the belt in question on April 11, prior to its inspection by Terbo. Gable first observed the belt on April 11, around noon. He indicated that there was not an Ainordinate amount of spillage@ on the belt line (Tr. 156).

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[5]On cross examination, it was elicited that dust in the starter box can only be seen when the cover is removed.

Gable testified that Morgan, who was present when the area was inspected by Terbo, told him that he (Morgan) did not feel that the spillage was enough to warrant an order, and A[t]hat we had people working in the area trying to take care of this problem . . .@ (Tr. 198).

Gable indicated that, in general, coal normally slips off from the ribs, and that spillage from belts is an everyday occurrence. According to Gable, when he observed the entry at issue it was A[b]lack to gray@ (Tr. 188). He also indicated that he did not see the tail roller, or other rollers turning in coal dust.

C. Analysis

1. Violation of 30 C.F.R. ' 75.400

Respondent did not proffer the testimony of Morgan or other eyewitness to the conditions observed by Terbo on April 11. Hence, there is no eyewitness testimony to contradict Terbo=s testimony regarding his observations on April 11. In this regard, I note that Gable testified that the entry was black to gray when he observed it a few hours after Terbo=s inspection, and that he did not see the tail roller or other rollers turning in coal dust. I find this testimony insufficient to rebut Terbo=s testimony as to what he observed during his inspection. I thus accept Terbo=s testimony. I find that there was an accumulation of coal dust in the B-belt entry to the extent and degree testified to by Terbo. (See, Old Ben Coal Company, 1 FMSHRC 1954 (December 1979)).

Plylar testified that, as observed by him at approximately 12:30 a.m., on April 11, there was an accumulation of coal, black in color, between three inches and twenty-four inches deep, for the entire length of the belt at question. There is no evidence that the material observed by Plylar had been cleaned prior to Terbo=s inspection, and that the coal dust observed by Terbo had just accumulated. There is no evidence to establish specifically when the coal dust observed by Terbo had been deposited in the areas noted by him. I discount entirely Morgan=s hearsay opinion that the spillage was an everyday occurrence, and was not enough to warrant a section 104(d) order. I find that hearsay opinion is inherently unreliable, and hence this testimony is disregarded.

Gable indicated that spillage from belts is a Acommon occurrence@ (Tr. 154), and that what he observed midday on April 11, was not Aan inordinate amount of spillage@ (Tr. 156). However, taking into account the black color, depth, and extent of the coal dust accumulations,[6] I find that the coal dust had been Apermitted to accumulate@ in the entry at issue, and in the starter box. I thus find that it has been established that Respondent did violate section 75.400 supra.

[6] I find that the accumulations covered the roof, floor and ribs of the entry at issue for the entire length of the entry.

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 C.F.R. ' 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 822, 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, 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 set forth above, (I)(C)(1) infra, the evidence clearly

establishes a violation of section 75.400 supra. Based upon the testimony of Terbo, as corroborated by Plylar, I find that due to the extensive presence of coal dust, fine coal dust in the air, and rollers turning in dust, the violation contributed to the hazard of a fire or explosion. The belt may not have been running when initially observed by Terbo. However, taking cognizance of the extent of the violative conditions herein, I find that the hazard of a fire or explosion would have been contributed to given the continuation of normal mining operations, i.e., the mining of coal and the running of the belt.

In analyzing the third element set forth in Mathies, supra, i.e., the likelihood of an injury producing event, I note that carbon monoxide sensors were placed at intervals along the entry, the belt was flame retardant and resistant, and no injuries had been reported at Respondent=s mines due to the type of conditions observed by Terbo. However, I place more weight on the existence of the following: **the extent and depth of the coal dust accumulations, the presence of float coal dust in suspension, the presence of coal in a starter box where arcing is possible, the presence of hot rollers and stands, the fact that the belt was cutting into some stands, the accumulation of coal on and around the stands, and the presence of rollers turning in dust. I conclude, based on all these circumstances, that given continued mining operations, the hazard of a fire or explosion was reasonably likely to have occurred. Further, based upon the uncontradicted testimony of Terbo, I conclude that should this event have occurred, it was reasonably likely to have resulted in an injury of a reasonably serious nature. For these reasons, I conclude that the violation was significant and substantial.**

3. Unwarrantable Failure

In essence, it appears to be Respondent=s position, as articulated by Gable, that spillages are common, and that the conditions observed by Terbo were not out of the ordinary and did not have to be cleaned up. Also, it appears to be Respondent=s position that, in general, extensive accumulations can occur in a short time.[7] However, the record clearly establishes that accumulations had existed as early as midnight April 11, and had been reported to management at approximately 1:45 a.m., on April 11. Terbo indicated that two persons were observed cleaning at the tail of the B-belt. However, there is no evidence of any other efforts made to clean the extensive

[7] **In this connection, I note the testimony of Plylar, on cross examination, wherein he indicated that if a belt is out of alignment, large accumulations, black in color, can result in a Ashort amount of time@ (Tr. 63). He also indicated that this can occur if the header becomes Ajammed up with rocks@ (Tr. 62).**

accumulations that extended for 5,000 feet. I thus find that the record fails to establish that significant efforts were made to clean the accumulations until Terbo=s inspection. In addition, taking into account the depth of the accumulations, their extent, and their obvious black color, I conclude that the violation herein was the result of more than ordinary negligence and constituted aggravated conduct. I thus find that the violation resulted from Respondent=s unwarrantable failure (see, Emery Mining Corp., 9 FMSHRC 1997 (1987)).

4. Penalty

I find, consistent with the discussion above, (I)(C)(3) infra,) that Respondent=s negligence was more than ordinary. I also find that the violation herein was reasonably likely to have resulted in a fire or explosion causing a serious injury. I thus find that the level of gravity was high. Further, taking into account the history of section 75.400 violations at this mine, I find that a penalty of $6,500 is appropriate.

II. Order No. 3194841.

A. Violation of 30 C.F.R. ' 75.1725

1. Petitioner=s Case

Plylar inspected the A-belt on April 10, at approximately 11:30 p.m. At that time, he observed that the belt was out of alignment, and was cutting into the belt stands. He testified, in essence, that the belt was running on top of some rollers that were partially lying on the floor, as both ends of these rollers were no longer attached to the stand. Plylar noted that several rollers were missing, and several top rollers were Ajammed up together@ (Tr. 238). He indicated that the belt frame was hot to the touch. According to Plylar, there was an accumulation of coal under the belt drive and the take-up rollers, which extended the entire length of the belt line.

Plylar indicated that the accumulations had been covered by rock dust, and extended for the entire belt length which was more than 4,000 feet. According to Plylar, he had seen the conditions that he had testified to in the past, and that Aseveral of these conditions@ had been written up in the fire boss book Afor the last several days.@ (Exh. G-1, Par. 10). Plylar noted that he had never seen a belt line A . . . with this extent of damage to it or this extent of belt cutting into the frames . . .@ (Tr. 246).

At approximately 12:35 a.m., Plylar recommended to Taylor to turn off the belt. Taylor responded that he did not have the authority to shut it down. According to Plylar, he requested of Taylor to shut the belt down because of the hazard resulting from the belt cutting into the frames which could cause the belt to smolder.

On April 11, Keith Wayne Ely, an MSHA supervisory ventilation specialist, inspected the East A-belt, and walked
the entire length of the belt inby to the B-belt. According to Ely=s contemporaneous notes, (Exh. G-6), at the first crosscut inby the take-up roller, a roller was lying on the floor, but was not rubbing against any material on the floor, as the belt was not in operation. At a half crosscut outby brattice No. 13[8], one end of a roller had come loose from where it was suspended by a hanger, and was lying on the floor. At brattice No. 14, a bottom roller was missing which allowed the belt to rub against the belt stand. At brattice No. 16, two stands were being rubbed by the belt. At brattices Nos. 21 and 22, there were rollers on the bottom. At brattice No. 24, there was a roller with one end on the floor. At brattices Nos. 29, 31, 32, and 38, the belt was rubbing against the belt stand. A roller was missing at brattice No. 38. At brattice No. 42, there was an accumulation of coal that was eight inches deep, ten inches wide, and extended for twenty-four inches. At brattice No. 44, the stands were too hot to touch.

[8]Ely had identified the various brattices as brattice 13, etc. In the test of this decision, the brattices are identified as brattice No. 13, etc.

Ely noted that the belt was rubbing against the belt stand causing grooves up to one inch deep.[9] According to Ely, at one location the belt structure had worn to the point where it was no longer solid, but had been cut into two pieces. Ely indicated that he had touched the belt structure with the back of his hand, and it was so hot that he had to remove his hand.

Ely indicated that if one end of a roller had become detached, and was lying on the floor, the end that was still attached and not rotating could become heated by the belt rubbing against it. Also, the movement of the belt could cause the roller end that was on the floor to rub against the floor, and create friction and heat. According to Ely, if the belt is not aligned properly, and travels from side to side, it can rub against the metal belt stands, and cause the belt to become frayed. Should this occur, the frayed ends can get wrapped up around the bearings resulting in an Aembers@ type condition (Tr. 347).

Ely indicated, in general, that the conditions that he observed would lead directly to a fire. He explained that this conclusion was based upon the presence of coal which was a fuel for the fire, along with an ignition source i.e., friction along the belt caused by the rubbing of the belt against the stands, and some rollers rolling in coal dust. According to Ely, since the cited entry was in intake air, and the working section was located inby, it was highly likely that the resulting fire would cause injuries due to smoke inhalation.

Ely opined that the violation resulted from Respondent=s unwarrantable failure. In this connection, he indicated that the belt was examined each shift, and that the cited conditions could be seen from the track which ran alongside ninety percent of the belt line. He noted that the black discoloration of the stands was Avery evident@ (Tr. 310). He termed the condition of the rollers as Aobvious@ (Tr. 310). He stated that the ignition sources, i.e., the coal accumulations, were Aobvious@ (Tr. 310). Further, because the belt traveled from one side to another and was not aligned properly, he concluded that it had not been well maintained.[10]

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[9]On cross examination it was elicited that only nine stands were damaged.

[10] Ely also indicated that entries in the fire boss book confirmed that the cited conditions existed for some time. I do not place any weight on this testimony. The fire boss book is the best evidence of its contents. However, the fire boss book was not offered in

Ely concluded that the cited conditions had not been created within one shift, and that it took several days for the conditions to have developed. His conclusion was based on the large number of missing rollers, the existence of grooves in the metal stands, and the observation that a number of rollers were connected to the stand on only one end, leaving the other end lying on the floor.

Ely issued a section 104(d)(2) order alleging a violation of 30 C.F.R. ' 75.1725(a) which provides as follows: AMobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.@

2. Respondent=s Evidence

On April 11, Gable accompanied Ely was during the entire inspection of the East A-belt, which was approximately one mile long, and contained 4,000 to 5,000 rollers. Gable indicated, in response to a leading question, that it is Anot uncommon@ for eleven rollers to be missing (Tr. 387-388). Gable opined, in essence, that the conditions cited by Ely did not present any safety hazard to miners.

Gable indicated that the belt, and cords contained in it, are rubber, and fire resistant. Gable indicated that, in normal operations, spillages are cleaned by twenty-five miners whose sole task is to clean the belt line.

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evidence.

Bill Woodward, a self employed consultant, who has designed and helped install belt lines in underground mines, testified for Respondent. Woodward indicated that as a consultant, he visits an underground mine five or six times a month, and inspects belt lines. Woodward opined that if bottom rollers are making contact with the belt stands, the belt would not be unsafe to people. He opined that the main problem with missing rollers is damage to the belt. He indicated that if eleven rollers were bad or missing along a one mile long belt line, the belt would become unsafe if the problems with the rollers existed for A[p]robably four or five days a week@ (Tr. 40) (February 27, 1996).[11] He opined that should this occur, A . . . that would be more damage to the belt than anything else@ (Tr. 40) (February 27, 1996).

According to Woodward, if a belt is rubbing against a stand, it can take two to three days, or Aweeks,@ Amonths,@ or Aa few days,@ for the belt to cut into the stand (Tr. 42) (February 27, 1996). He explained that it depends upon how hard the belt is rubbing against the stand, and the type of belt involved. Woodward stated that, in essence, stuck rollers, and belts not being aligned properly are Avery common@ conditions (Tr. 47) (February 27, 1996). He said that it is A[v]ery, very common@ for belts to be frayed at their edges, and it is Acommon@ for belts to come in contact with the stands (Tr. 47) (February 27, 1996). Woodward opined that the conditions listed in the order at issue were not unsafe for miners.

3. Analysis

In essence, it appears to be Respondent=s position that the belt was not unsafe to miners, since less than two tenths of a percent of the rollers on the belt were bad, and only nine stands, i.e., less than nine tenths of a percent of the stands, were damaged. I reject this argument for reasons that follow.

[11] The transcript of the continued hearing on Februray 27, 1996, is cited by reference to the page of the transcript and the date i.e., February 27, 1996.

I accept Ely=s opinion that the belt in question was not maintained in a safe condition. Respondent did not rebut or impeach Ely=s testimony regarding the following conditions: the belt was not in alignment and was contacting some belt stands, ten rollers were missing, and at three locations one end of a roller was lying on the floor. These condition can cause heat and friction which can lead to smoke or a fire.[12] I reject Gable=s opinion that the belt was safe, as the record does not set forth in sufficient detail the facts that he took into account which formed the basis for this opinion. I also reject Woodward=s opinion that the cited conditions were not unsafe to miners. On cross-examination, Woodward was asked to explain why the following conditions do not present any hazards to miners: the belt being out of alignment, the belt running into the stands, and the presence of stuck rollers. His response is as follows: A[i]t just don=t@ (Tr. 67) (February 27, 1996). The only other expressed basis for his opinion was his reliance on the assumption that the belt in question satisfied MSHA requirements, and would not burn. There is insufficient evidence in the record to predicate a finding regarding the composition of the belt, and the degree to which it was flamable. Further, as set forth in Ely=s credible testimony, other conditions were present which could have caused a fire. I thus find that there is an insufficient basis to put any reliance upon Woodard=s opinion.

For the above reasons, I find that the belt was in Aunsafe condition@, and no unsafe components had been removed when cited. I thus find that it has been established that Respondent did violate section 75.1725(a) supra.

4. Significant and Substantial

There is no evidence in the record that there have ever been any injuries to miners at the subject mine, resulting form the cited conditions. Also, carbon monoxide monitors were in place along the belt line. Further, there is no evidence that there was any violative coal accumulation along the belt line. Nor is there any evidence that the belt material did not meet MSHA specifications.

However, I note the following: The combination of the violative conditions, the presence of coal, the presence of friction as testified to by Ely and not contradicted or impeached, the uncontradicted testimony of Ely that the stands were hot to the touch, and the fact that the entry was ventilated by intake air which would have carried any smoke generated by the friction resulting from the violative conditions down to the working section. Based on these factors, I conclude that the violation was significant and substantial (See, Mathies, supra).

5. Unwarrantable Failure

[12] See, Exs. G-13, G-14 (Par 2.13), and G-15.

Respondent did not impeach or contradict Ely=s testimony that the violative conditions observed by him were obvious, and would have been noted by a person traveling alongside the beltway performing an inspection. There is no evidence as to how long in fact the violative conditions noted by Ely had existed. However, I take cognizance of the following: the extent of the conditions observed by Ely, the fact that grooves had been cut into a stand to a depth of one inch, the fact that the belt was out of alignment and not corrected, the fact that conditions had been observed by Plylar the shift before, the lack of evidence that these conditions were corrected between the time observed by Plylar and reported by him to Taylor, and subsequently observed by Ely the following shift, and the lack of evidence that Respondent made any significant attempt to correct these

conditions. Based on all these factors, I conclude that the violation herein resulted from more than ordinary negligence, and reached the level of aggravated conduct. I thus find that the violations resulted from Respondent=s unwarrantable failure (See, Emery, supra).

6. Penalty

Considering the factors set forth in section 110(i) of the Act, I find that a penalty of $6,500 is appropriate.

III. Order Nos. 3016179, 3192505, 3021493, and 3192465

At the hearing, Respondent, with the concurrence of Petitioner, made a motion to approve the settlement the parties arrived at regarding these orders. It is proposed to reduce the total penalty from $13,000 to $8,600. 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.

IV. Docket Nos. SE 95-358, SE 95-339, SE 95-367, SE 95-344 and SE 95-476

At the hearing, Respondent, with the concurrence of Petitioner, made a motion to approve the settlement the parties arrived at regarding these cases. It is proposed to reduce the total penalty from $41,289 to $14,621. 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.

ORDER

It is ORDERED that, within 30 days of this decision, Respondent shall pay a total penalty of $36,221.

Avram Weisberger
Administrative Law Judge

Distribution:

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