FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 9, 1999

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 98-141-M
Petitioner	:	A. C. No. 54-00141-05538
v.	:	
	:	
CANTERA GREEN,	:	
Respondent	:	Cantera Green Mine

DECISION

Appearances: James A. Magenheimer, Esq., Office of the Solicitor, U.S. Department of Labor, New York, New York, on behalf of Petitioner;
Edgardo R. Jimenez Calderin, Esq., Jimenez, Calderin & Carrasquillo, San Juan, Puerto Rico, on behalf of Respondent.

Before: Judge Melick

This case is before me upon the Petition for Civil Penalty filed by the Secretary of Labor against Cantera Green pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801, *et seq.*, the "Act," alleging 17 violations of mandatory standards and seeking an amended civil penalty of $16,400.00 for those violations. The general issue before me is whether Cantera Green committed the violations as alleged and, if so, what is the appropriate civil penalty to be assessed considering the criteria under Section 110(i) of the Act. Additional specific issues are addressed as noted.

Six of the charging documents allege violations of the mandatory standard at 30 C.F.R. ' 56.11001. That standard requires that "[s]afe means of access shall be provided and maintained to all working places."

Citation No. 7795306 (amended at hearing to delete the "unwarrantable failure" and high negligence findings and then modified to a citation under Section 104(a) of the Act) alleges a "significant and substantial" violation of the above cited standard and, as amended, charges as follows:

> The primary crusher motor belts did not have a safe means of access. The plant employee visits the area at least once each 15 days, being exposed to fall from 12 ft. to the ground. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with

safety violations.

Inspector Armando Peña of the Department of Labor=s Mine Safety and Health Administration (MSHA), conducted an inspection of the Cantera Green Mine on February 17, 1998. Mine owner Adriel Colón accompanied him during his inspection. Peña opined that the primary crusher motor belt had no safe means of access. It was necessary to access this area for purposes of lubrication, oil changes, maintenance and to replace and restore the conveyor belts. Peña observed that employees were in the vicinity of the belt every fifteen days for maintenance placing them about 12 feet above ground. Peña concluded that in the absence of a work platform with handrails, there was a falling hazard subjecting miners to serious injury. Within this framework of evidence it is clear that a violation existed as charged.

The violation is also alleged to have been "significant and substantial." A violation is properly designated as "significant and substantial" if, based on the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature. *Cement Division, National Gypsum Co.*, 3 FMSHRC 822, 825 (April 1981). In *Mathies Coal Co.*, 6 FMSHRC 1,3-4 (January 1984), the Commission explained:

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

See also *Austin Power Inc. v. Secretary*, 861 F.2d 99, 103-04 (5th Cir. 1988), *aff'g* 9 FMSHRC 2015, 2021 (December 1987) (approving *Mathies* criteria).

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)). The likelihood of such injury must be evaluated in terms of continued normal mining operations without any assumptions as to abatement. *U.S. Steel Mining Co., Inc.*, 6 FMSHRC 1573, 1574 (July 1984); See also *Halfway, Inc.*, 8 FMSHRC 8, 12 (January 1986) and *Southern Ohio Coal Co.*, 13 FMSHRC 912, 916-17 (June 1991). Within this framework of law I conclude that the violation was indeed also "significant and substantial."

In reaching these conclusions I have not disregarded the testimony of mine owner Adriel Colón. I find, however, that while Mr. Colón=s testimony does not disprove the violation it may nevertheless be considered in mitigation of negligence. In this regard, it is undisputed that MSHA Inspector Alejandro Batista, had, in April of 1997, inspected the same equipment at issue herein

and did not cite any violations at the locations here cited. Based on this evidence I conclude that the violations here cited were not so obvious as initially suggested. Moreover, Mr. Colón could reasonably have placed some reliance upon Inspector Batista=s prior inaction.

Mr. Colón also testified without contradiction that he had specifically asked Batista, when he was inspecting the Cantera Green premises in April 1997, if there were other problems he should correct. The conditions cited herein were obviously not then noted by Batista. Under the circumstances the Secretary=s action at hearing in deleting her "unwarrantable failure" findings and reducing negligence to "low," was appropriate.

In reaching the above conclusions I have also not disregarded Inspector Peña=s testimony that, during his inspection in February 1998, Colón told him, in essence, that he knew there were violations (including the six citations/orders now under consideration) but that he was too busy with the construction of a new plant to correct those violative conditions. I find credible however, Colón=s explanation at hearing that, while he in fact made such a statement, Peña erroneously believed that this admission applied to all violations cited on that date. Colón specifically and credibly denied that his admission went to the first six charging documents here at issue and explained that he always believed that these conditions were not violations because of Inspector Batista=s failure to cite the same conditions during his April 1997, inspection.

The Secretary also argues in her posthearing brief that all six of the violations of the standard at 30 C.F.R. ' 56.11001 were the result of "unwarrantable failure" and presumably also of high negligence, because they were repeated violations of the same mandatory standard (See Joint Exh. No. 2)[1]. However, since the similarity of the prior violations and the precise nature of the equipment involved in those prior cases has not been established, it is impossible to determine whether the operator was on notice from those prior violations that the precise conditions at issue herein were also violative. Under all the circumstances I find a civil penalty of $100.00 to be appropriate.[2]

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[1] The Secretary amended Citation No. 7795306 at hearing, however, to delete the unwarrantable failure findings and to charge only low negligence.

[2] In assessing civil penalties in this case I have also considered the small size of the operator (12 employees), that the violative conditions were abated in good faith, that the

operator had a history of 18 violations within the previous two years and that there was an absence of evidence regarding the effect of the penalties on the operator=s ability to stay in business.

Order No. 7795309, issued pursuant to Section 104(a)(1) of the Act, also charges a violation of the standard at 30 C.F.R. ' 56.11001 and alleges as follows:[3]

> The #2 conveyor head pulley did not have a safe means of access. The plant employee visits the area at least once each 15 days being exposed to fall from 10 ft. to the floor. Employees were allowed to perform their tasks prior to

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[3] Section 104(d)(1) of the Act provides as follows:

"If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated."

> correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

According to Inspector Peña, the No. 2 conveyor head pulley did not have hand rails nor a work platform or ladder. He noted that the head pulley was at the top of the conveyor 10 feet above ground and that maintenance was performed here at least twice a month. According to Peña, these conditions created a falling hazard from which a miner could receive serious or fatal injuries. I find based on the credible evidence that the violation existed as charged and presented a hazard of high gravity. It may also reasonably be inferred that the violation was "significant and substantial."

The Secretary also argues that the violation was a result of the operator=s "unwarrantable failure" because this was a repeated violation at other locations at the mine. The Secretary also maintains that mine owner Adriel Colón was aware of this condition since access had been provided at similar locations at other conveyors, e.g., the head pulleys at the Nos. 7 and 8 conveyors. While I agree that the operator is chargeable with negligence, I do not find that such negligence was of such a serious nature as to constitute "unwarrantable failure." I find such reduced negligence for the same reasons applicable to Citation No. 7795306, previously discussed. A civil penalty of $100.00, is appropriate. The order must accordingly be modified to a "significant and substantial" citation pursuant to Section 104(a) of the Act.

Order No. 7595310, also issued pursuant to Section 104(d)(1) of the Act alleges a violation of 30 C.F.R. ' 56.11001, and charges as follows:

> The #3 conveyor head pulley did not have a safe means of access. The maintenance employee visits the area at least once each 15 days, being exposed to fall from 10 ft. to the floor. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

This violation is virtually identical to the violation charged in Citation No. 7795309 and for the same reasons the order is modified to a "significant and substantial" citation under Section 104(a) of the Act with its "unwarrantable failure" findings vacated. As with the prior citation, the violation is of high gravity and the result of moderate negligence. A civil penalty of $100.00 is appropriate.

Order No. 7795311, also issued pursuant to Section 104(d)(1) of the Act, alleges a violation of 30 C.F.R. ' 56.11001, and charges as follows:

> The vibrator motor did not have a safe means of access. Maintenance employee visits the area weekly, being exposed to fall from 8 ft. to the ground floor. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

According to Inspector Peña, there was no safe means of access to the motor and pulley of the No. 1 vibrator. According to Peña, a miner who is performing maintenance or lubrication at the motor or replacing the screens on the vibrator would be subject to a falling hazard of approximately 8 feet. He noted that maintenance had been performed by use of a ladder. Peña believed this was particularly unsafe because of the instability of the ground and concluded that serious injuries could result from a fall from that height. Based on the credible evidence, I find that the violation is proven as charged and that it was serious and "significant and substantial." The Secretary=s arguments that the violation was unwarrantable and of high gravity are rejected for the reasons previously stated. The violation was the result of moderate negligence and, under the circumstances, a civil penalty of $100.00 is appropriate. The order is modified to a citation under Section 104(a) of the Act.

Order No. 7795316, also issued under Section 104(d)(1) of the Act, alleges a violation of the standard 30 C.F.R. ' 11001 and charges as follows:

> The #5 conveyor head pulley did not have a safe means of access. Maintenance employee visits the area each 15 days, being exposed to fall from 12 ft. to the ground floor. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is unwarrantable failure.

It is stipulated that this condition is in all respects the same as the conditions cited at the Nos. 2 and 3 head pulleys. Accordingly, the result is also the same. The order is accordingly modified to a "significant and substantial" citation under Section 104(a) of the Act with a civil penalty of $100.00.

Order No. 7795317 alleges a violation of the standard at 30 C.F.R. Section 56.11001 and charges as follows:

> The #6 conveyor head pulley did not have a safe means of access. Maintenance employee visits the area each 15 days, being exposed to fall from 11 ft. to the ground. Employees were allowed to perform their tasks prior to

> correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

It is stipulated that this condition is the same condition as cited at the Nos. 2, 3 and 5 conveyor head pulleys. Under the circumstances the order is modified to a "significant and substantial" citation under Section 104(a) of the Act with a civil penalty of $100.00.

The next eleven orders are uncontested and only the amount of penalty is at issue. Order No. 4545862, issued pursuant to Section 104(d)(1) of the Act, charges a violation of the standard at 30 C.F.R. ' 56.14107 and alleges as follows:

> The #9 conveyor tail pulley was not guarded. Persons did not work or walk in the area while the equipment is running. Maintenance is performed in the area when the equipment is running. Maintenance is performed in the area when the equipment is turned off. Employers were allowed to perform their tasks prior to correcting safety violations operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

The cited standard, 30 C.F.R. Section 56.14107(a), provides that "moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail and take-up pulleys, flywheels, couplings, shafts, fan blades and similar moving parts that can cause injury."

According to Inspector Peña, there was an exposed pinch point between the conveyor belt and tailpulley of the No. 9 conveyor. No guarding was provided. According to Peña, miners could become entangled in the pinchpoint while working or walking around the tail pulley and suffer serious or fatal injuries. Peña observed that the area was cleaned six or seven times a day. It is not disputed that the violation was of high gravity.

The Secretary maintains the violation was the result of high negligence because it was a repeat violation and Colon had admitted to Inspector Peña that he was aware of the violation but did not correct it because he was focused on constructing his new plant. Under the circumstances, I agree that this violation was the result of high operator negligence. In particular consideration of the size of the operator, however, I find that a civil penalty of $400.00 is appropriate for the violation.

Order No. 4545863, also issued pursuant to Section 104(d)(1) of the Act, alleges a

violation of the standard at 30 C.F.R. ' 56.14132 and charges as follows:

> The Cat 980C (S.N. 63X07021) front-end loader back-up alarm was damaged, while the equipment was used to load trucks in the plant area. Persons were seen where the loader backed-up. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

The cited standard, 30 C.F.R. Section 56.14132(a), provides that "[m]anually operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety feature shall be maintained in functional condition."

According to the undisputed testimony of Inspector Peña, the Cat 980C front-end loader indeed had a damaged and non-functioning backup alarm. The loader operator told Peña that the condition had existed for two weeks and stated that he had reported this fact to mine owner Adriel Colón. It is undisputed that operating such equipment in reverse without a functioning backup alarm could result in fatalities. The condition was particularly hazardous because this loader had blind spots and lacked clear visibility to the rear. Under the circumstances, the violation was indeed of high gravity and the result of high negligence. Colón maintains that he had not had any similar violations in the prior ten years. Because of the size of the operator and lack of a recent history of similar violations, a penalty of $400.00 is appropriate.

Order 454864, also issued pursuant to Section 104(d)(1) of the Act, charges a violation of the standard at 30 C.F.R. ' 56.14101(a) and charges as follows:

> The Cat 980C (S.N. 63X07021) Front-end loader parking brake system was damaged, while the equipment was used to load trucks in the plant area. The area where the equipment was parked was flat. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

The cited standard, 30 C.F.R. ' 56.14101, provides in relevant part that "[i]f equipped on self-propelled mobile equipment, parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels."

According to the undisputed testimony of Inspector Peña, this was the same Caterpillar 980C front end loader cited in the previous order for the absence of a backup alarm. According to Pená, without a functioning parking brake persons could be run over or other equipment struck

if the cited loader was parked on a grade. He observed that some areas were indeed irregular at the mine site. It is undisputed that this condition had been reported to mine owner Adriel Colón two weeks before this inspection. Colón admitted that he knew of the condition but explained that he had other equipment to repair.

Within this framework of evidence I find that the violation was of high gravity and the result of high negligence. Colón maintains that no similar violation had occurred in ten years. Considering the size of the operator and the absence of a recent history of prior violations of this standard, I find that a civil penalty of $400.00, is appropriate.

Order No. 4545865, also issued pursuant to Section 104(d)(1) of the Act, alleges a violation of the standard at 30 C.F.R. ' 56.18002, and charges as follows:

> The mine operator or his designated person was not conducting the examination of working places, at least once each shift for conditions which may adversely affect safety or health. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment, and for this reason his priority was not focused on complying with safety violations. Management was involved in aggravated conduct constituting more than ordinary negligence this violation is an unwarrantable failure.

The cited standard, 30 C.F.R. ' 56.18002, provides as follows:

> A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

It is undisputed that Respondent was not performing examinations of the working places on each shift as required. Indeed, mine owner Adriel Colón had no records of any such examinations. Pená concluded that the violation was of high gravity because of the large number of violations (17) found on his inspection on February 17, 1998. Colon argued only that he had not performed the required examinations because he was too busy working on his new plant. Within this framework of evidence I find that the violation was indeed of high gravity and the high operator negligence. Particularly in light of the absence of a recent history of similar violations and the size of the operator, I find that a civil penalty of $1,500.00, is appropriate.

Order No. 7795305, also issued pursuant to Section 104(d)(1) of the Act, charges a violation of the standard at 30 C.F.R. ' 56.11001 and charges as follows:

> The plant motor feeder did not have a safe means of access. The plant

employee visits the area at least once each 15 days, being exposed to fall from 15 ft. to the ground. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

As previously noted the cited standard requires that "safe means of access shall be provided and maintained to all working places." The violation is admitted and it is undisputed that there was no safe means of access to the plant motor feeder. There was also a 15 ft. drop-off with no handrails, work platform or ladder available. It is also undisputed that employees would be exposed twice a month to the hazard of falling while performing maintenance at the cited location. It may reasonably be inferred therefore that the violation was of high gravity.

The violation was also clearly the result of high negligence considering the undisputed evidence that Colón knew of this condition for two or three weeks. A civil penalty of $400.00, is accordingly warranted.

Order No. 7795307, also issued pursuant to Section 104(d)(1), of the Act, alleges a violation of the standard at 30 C.F.R. ' 56.11012, and charges as follow:

> The primary crusher walkway had an opening of 13" X 38" (south side). The plant operator walks by the area daily, being prior exposed to fall and sustain serious injuries. Employees were allowed to perform their tasks to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violations is an unwarrantable failure.

The cited standard, 30 C.F.R. ' 56.11012, provides as follows:

> Openings above, below or near travelways through which persons or materials may fall shall be protected by railings, barriers or covers. Where it is impractical to install such protective devices, adequate warning signals shall be installed.

This violation is also undisputed. According to Inspector Pená, miners could fall into the cited opening resulting in broken legs, arms or chest injuries. Miners on all shifts were exposed to the hazard. It may reasonably be inferred from this evidence that the violation was of high gravity.

The Secretary also maintains that the violation was also the result of high negligence based upon Colón=s purported admission that he had been aware of the cited condition. Colón testified, however, that the first time he observed this condition was when he accompanied

Inspector Peña on February 17. He also noted that the violative condition was in a corner and not readily visible. In light of the large number of violations issued on this occasion possibly leading to confusion and the absence of a corroborative written statement by Colón, I am inclined to give credence to Colón=s testimony. In addition, even Inspector Peña acknowledged that Colón had told him that he had no idea when the condition had occurred or who had removed that section of the flooring. Under the circumstances, I do not find that the Secretary has sustained her burden of proving high negligence or "unwarrantable failure." Accordingly, Order No. 7795307 is modified to a citation under Section 104(a) of the Act. I find that a civil penalty of $100.00 is appropriate

Order No. 7795308, also issued pursuant to Section 104(d)(1) of the Act, alleges a violation of the standard at 30 C.F.R. ' 56.14107(a), and charges as follows:

> The fan and motor belts of the primary crusher were not guarded. The crusher operator turns on and off the equipment in a regular basis, being exposed to sustain serious injuries. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

The cited standard, 30 C.F.R. ' 56.14107(a), provides that "moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail and take-up pulleys, flywheels, couplings, shafts, fan blades and similar moving parts that can cause injury."

This violation is undisputed. According to Inspector Peña, the unguarded fan and motor belts at the primary crusher created a hazard from potential entanglement. In particular, Pená observed that there was no guard in place at the "on-off" switch. It may reasonably be inferred that this violation was therefore of high gravity.

The Secretary maintains the violation was also the result of high negligence because Colón admitted that he had been aware of the violative condition but was focusing on building a new plant. The facts support the Secretary=s findings of high negligence. Considering the criteria under Section 110(i) of the Act, I find that a civil penalty of $400.00, is appropriate.

Order No. 7795312, also issued pursuant to Section 104(d)(1) of the Act, alleges a violation of the standard at 30 C.F.R. ' 56.12032 and charges as follows:

> The electrical junction box of the #1 vibrator motor did not have a cover plate. The electrical cables and connections were insulated. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority

> was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

The cited standard, 30 C.F.R. Section 56.12032 provides that "inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs."

It is not disputed that the absence of a cover plate for the vibrator motor junction box presented an electrocution hazard and that employees would be exposed to this hazard once a week. It may be reasonably be inferred that the violation was therefore of high gravity. Based upon Colón=s admission that he had not had time to correct the condition because of work on his new plant, the violation is also correctly characterized as the result of high negligence. Considering the criteria under Section 110(i) of the Act, an appropriate civil penalty of $400.00 will be assessed.

Order No. 7795313, also issued pursuant to Section 104(d)(1) of the Act, alleges a violation of the standard at 30 C.F.R. ' 56.14107(a) and charges as follows:

> The #4 conveyor tail pulley was not guarded. Employees did not walk in the area while the equipment is running. Maintenance is performed in the area when the equipment is turned off. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

The cited standard, 30 C.F.R. Section 56.14107(a), provides for protection from moving machine parts. The violation is undisputed. The tail pulley at the No. 4 conveyor was not guarded. The evidence of high gravity is undisputed. Colón admitted that he knew that the cited condition had existed but maintains he had not had time to correct it because of work on his new plant. This evidence supports a finding of high negligence. A civil penalty of $400.00 will be assessed.

Order No. 7795314, also issued under Section 104(d)(1), alleges a guarding violation under the standard at 30 C.F.R. ' 56.14107(a) and charges as follows:

> The #5 conveyor tail pulley was not guarded. Persons did not work or walk by the area while the equipment is running maintenance is performed in the area when the equipment is turned off. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused

on complying with safety violations. Management was engaged in aggravated conduct constituting more then ordinary negligence. This violation is an unwarrantable failure.

The violation is undisputed as is the evidence incorporated by reference at hearing. It is undisputed that serious and fatal injuries could result from the violative condition. Under the circumstances, the violation is of high gravity. Since Colón admitted that he had prior knowledge of the violative condition it is also the result of high negligence. The order is accordingly affirmed as written and a civil penalty of $400.00 is assessed.

Order No. 7795315, also issued pursuant to Section 104(d)(1) of the Act alleges a violation of the standard at 30 C.F.R. ' 56.12032, and charges as follows:

> The electrical junction box of the #5 conveyor motor did not have a cover plate. Employees were allowed to perform their tasks prior to correcting safety violations. Operator was involved in the installation of additional equipment and for this reason his priority was not focused on complying with safety violations. Management was engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure.

The cited standard was admittedly violated and the hazard of electrocution undisputed. Colón also admitted that he knew of violative condition but was too busy installing his new plant to correct it. The Secretary=s findings of a serious hazard and high negligence are therefore proven as charged. The order is accordingly affirmed as written and a civil penalty of $400.00 will be assessed.

ORDER

Order Nos. 7795306, 7795307, 7795309, 7795310, 7795311, 7795316 and 7795317, are hereby modified to citations pursuant to Section 104(a) of the Act with "significant and substantial" findings. Order Nos. 4545862, 4545863, 4545864, 4545865, 7795305, 7795308, 7795312, 7795313, 7795314 and 7795315, are affirmed. Cantera Green is hereby directed to pay civil penalties of $5,800.00 within 40 days of the date of this decision.

Gary Melick
Administrative Law Judge
703-756-6261

Distribution:

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