

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3577/FAX 303-844-5268

July 7, 2003

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2002-194
Petitioner	:	A.C. No. 05-03836-03692
	:	
v.	:	
	:	Foidel Creek Mine
TWENTYMILE COAL COMPANY,	:	
Respondent	:	

DECISION

Appearances: Kristi L. Floyd, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for the Secretary of Labor;
 R. Henry Moore, Esq., Buchanan Ingersoll, Pittsburgh, Pennsylvania, for Twentymile Coal Company.

Before: Judge Manning

This case is before me on a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration (“MSHA”), against Twentymile Coal Company (“Twentymile”), pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 (the “Mine Act”). A hearing was held in the Commission’s courtroom in Denver, Colorado. The parties presented testimony and documentary evidence and filed post-hearing briefs.

I. STIPULATIONS OF THE PARTIES AND SUMMARY OF THE ARGUMENT

Twentymile operates the Foidel Creek Mine, an underground coal mine, in Routt County, Colorado. On August 30, 2001, MSHA Inspector Michael Havrilla inspected the Foidel Creek Mine. During this inspection, Inspector Havrilla issued six citations to Precision Excavating, Inc., an independent contractor at the mine. He issued six citations to Twentymile for the same alleged violations. Twentymile contested the six citations that it received in this civil penalty proceeding.

The parties entered into a number of stipulations at the hearing. The key stipulations are as follows:

11. This case involves five citations issued for conditions on a Ford 600 service truck and equipment or supplies in that truck and one citation for a condition on a CAT 627B scraper. These two pieces of equipment were being operated at the No. 2 Refuse Pile at the Foidel Creek Mine.
12. These two pieces of equipment were operated by employees of Precision Excavating, Inc. Such equipment was owned or leased by Precision Excavating.
13. Such equipment is not owned or operated by Twentymile. Twentymile has contracted with Precision Excavating to perform work at the No. 2 Refuse Pile area.
14. Precision Excavating has MSHA [Contractor] Id. No. CMY.
15. Citations were issued to Precision Excavating for the same conditions as described in the citations here. . . .
18. The issue before the Administrative Law Judge is whether it was appropriate to cite Twentymile for the conditions described in the citations. The parties agree that the conditions described in the citations would constitute violations of the cited standard, if it is found that it is appropriate to issue citations to Twentymile for these specific conditions. Additionally, the parties agree to accept each designation, including gravity, negligence and all other designations within each of the citations, if in fact it is determined that it is appropriate to have issued the citations to Twentymile. If the Administrative Law Judge does determine that it was appropriate to cite Twentymile for the conditions described within the citations, the parties further agree that the penalty assessments set forth in the Petition for Assessment of Penalty filed in this matter are consistent with the criteria set forth in section 110(i) of the Act.

The only issue in this case is whether the citations were properly issued to Twentymile. The Secretary contends that a mine operator is strictly liable for all violations of the Mine Act that occur at its mine and that MSHA has discretion to cite both a contractor and the mine operator for such violations. She states that Twentymile is in continuous control of the mine and is also in continuous control of everyone and everything that enters the mine. Twentymile has control over every vehicle and piece of equipment that enters its property. Consequently, citing Twentymile for safety hazards presented by a contractor's equipment furthers the objectives of the Mine Act by requiring Twentymile to assure that contractors are complying with the safety standards.

The Secretary also relies on the guidelines that she developed for inspectors to use when determining whether to cite a contractor, a mine operator, or both. These guidelines provide:

Enforcement action against a production-operator for a violation involving an independent contractor is normally appropriate *in any of* the following situations: (1) when the production-operator has contributed by either an act or by an omission to the occurrence of a violation in the course of an independent contractor's work; (2) when the production-operator has contributed by either an act or omission to the continued existence of a violation committed by an independent contractor; (3) when the production-operator's miners are exposed to the hazard; and (4) when the production-operator has control over the condition that needs abatement.

(III MSHA, U.S. Dep't of Labor, *Program Policy Manual*, Part 45 ("Guidelines"); Ex. J-1) (emphasis added).

The Secretary contends that the citations at issue fit within these Guidelines because Twentymile failed to examine Precision Excavating's equipment before it entered the mine property. In addition, Twentymile failed to inspect the contractor's equipment at any time while it was at the mine. The Secretary also maintains that Twentymile's employees were exposed to the hazards presented by the violations. Finally, the Secretary argues that Twentymile exercised control over the contractor's equipment as evidenced by the fact that it required Precision Excavating to remove the equipment from the mine after the citations were issued. It could have taken the same action prior to the inspector's arrival at the mine.

The Secretary also relies on Inspector Havrilla's justification for issuing the citations to Twentymile in this instance. Havrilla testified that in 1998-99, he observed a high number of contractor violations at the Foidel Creek Mine. He stated that he discussed this problem with Twentymile management. The number of contractor violations decreased for some period of time. When the inspector found six contractor violations on two pieces of equipment during his August 2001 inspection, he decided that enforcement against Twentymile was necessary to protect miners working at the Foidel Creek Mine.

Twentymile argues that the citations were improperly issued to it. The issuance of these citations was "contrary to the purpose and intent of MSHA's independent contractor regulations and good enforcement practice aimed toward improving mine safety and health." (T. Br. 7-8). The Secretary abused her discretion because there is no rational basis to support the agency's action. In this case, the Secretary's issuance of the citations was inconsistent with her past practices of citing only the contractor at the Foidel Creek Mine. In March 2000, for example, a piece of equipment owned by a different contractor received multiple citations but Twentymile only received one related citation for a condition over which it had assumed control and responsibility under the contract. In addition, Inspector Havrilla issued a citation to Precision Excavating in September 2001 without citing Twentymile.

Twentymile contends that the Secretary abused her discretion in this case because the citations violate “the fundamental purpose and principles of the Act and the Secretary’s own regulations which place responsibility upon contractors for their own violations.” (T. Br. 11). This improper shifting of responsibility is illustrated by the inspector’s testimony that Precision Excavating’s lead man told him that he did not know about the violative conditions on the equipment because Twentymile did not inspect the equipment. The issuance of citations to Twentymile under these facts is “directly contrary to MSHA’s, the Act’s, and the Commission’s goal of achieving mine safety [by] refusing to let contractors ignore their responsibility.” *Id.* It serves no purpose to cite Twentymile in addition to the contractor when it is clear that the contractor was responsible for the conditions, where the contractor tries to shift responsibility away from itself, and Twentymile has taken all reasonable steps to advise the contractor of its Mine Act responsibilities before it started working on the property. By issuing citations to Twentymile, Inspector Havrilla “legitimized” the efforts of Precision Excavating to avoid responsibility for complying with the Secretary’s safety standards. (T. Br. 14). Precision Excavating, not Twentymile, should be held responsible for inspecting its equipment for safety violations. Twentymile had specifically required Precision Excavating to inspect its equipment and to comply with MSHA regulations as set forth in the contract.

Twentymile also contends that the facts of this case do not meet the criteria set out in the Secretary’s Guidelines. As interpreted by the Secretary in this case, the Guidelines would require that the mine operator be cited in every instance in which a contractor is involved. The Secretary clearly failed to establish that her Guidelines call for the issuance of citations against Twentymile. In sum, the Secretary abused her discretion because she did not proceed pursuant to objective, ascertainable standards when she cited Twentymile for Precision Excavating’s violations.

II. DISCUSSION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Background

MSHA Inspector Michael Havrilla inspected the surface areas of the mine on August 30, 2001. One of the areas he inspected was the No. 2 refuse pile (“refuse pile”). The material that was on the refuse pile had previously been removed and the area was being reconditioned. Precision Excavating was hired by Twentymile to remove clay from the refuse pile area so that, after additional work was performed, it could be used to store rock and other material that is mined but cannot be sold. (Tr. 15-16, 83-84). Precision Excavating was using a pan type scraper to remove the clay. The refuse pile is on Twentymile property but it is some distance away from the preparation plant and other operations. No Twentymile employees were working at or near the refuse pile. Precision Excavating had been working at the mine for about one week with about four employees.

During his inspection, Inspector Havrilla issued six citations to Precision Excavating for conditions he observed on its equipment and, after discussing the matter with Twentymile employees, he issued six citations to Twentymile for the same violations. The citations can be summarized as follows:

Citation No. 7618775 states that the pressure gauge in the air compressor on the service truck was inoperative in violation of section 77.412(a). Citation No. 7618777 states that there was a ten by ten inch opening on the compressor which would allow contact with the drive belts and pulley in violation of section 77.400(a). Citation No. 7618786 states that the fire extinguisher on the service truck had not been examined at least once every six months in violation of section 77.1110. Citation No. 7618788 states that the scraper was being operated while in an unsafe condition because the diesel fuel tank was leaking in violation of section 77.404(a). Citation No. 7618884 states that there were three metal containers of gasoline on the service truck that were not labeled in violation of section 77.1103(a). Citation No. 7618886 states that there was a plastic container of gasoline on the service truck that did not meet NFPA requirements in violation of section 77.1103(a).

When Inspector Havrilla discussed the violative conditions on the service truck with Precision Excavating's lead man, he discovered that Twentymile had not examined Precision Excavating's equipment when they were first brought onto the property. (Tr. 31). The lead mine told the inspector that he did not realize that the service truck was out of compliance. Inspector Havrilla decided that he wanted to talk to Diane Ponikvar, a safety representative with Twentymile, and take some actions to "help reduce these hazardous conditions." *Id.* As he was leaving the refuse pile in his pickup truck, he noticed that the scraper was leaking diesel fuel and he told the operator of the scraper to shut it down. After he arrived at the mine office and informed Ms. Ponikvar of the violations, she told Precision Excavating to remove the service truck and scraper to a parking lot near the entrance of the mine. This equipment was not allowed back on mine property until the cited conditions were corrected.

Inspector Havrilla testified that he has been inspecting the Foidel Creek Mine since 1996. In 1998-99, he observed an increase in the number of citations issued to contractors. (Tr. 33). At about this time, MSHA headquarters issued a memorandum discussing the increase in the number of accidents involving contractors at mines. Inspector Havrilla testified that, at a close-out conference in early 1999, he discussed the contractor problem with mine management. Apparently, one particular contractor was overwhelmed with work and was not taking "care of the normal wear and tear on machinery." (Tr. 34). The inspector testified that he warned Twentymile management that he would issue citations to both the contractor and Twentymile if the number of contractor violations was not reduced. He further testified that at a close-out conference in November 2000, he advised Twentymile that there had been a decrease in the number of contractor violations at the mine. When Inspector Havrilla discovered six violations

on two pieces of contractor equipment during his August 2001 inspection, he wanted to find out the “root cause to this problem.” (Tr. 35). He testified that:

In talking to the lead man, finding out that the equipment was just let on the property, . . . the operator, through omission, allowed this equipment to operate, and they had been operating for at least a week so that through omission this condition was allowed to continue, so I felt that I had a serious problem. I also felt that I am meeting the four factors and that I had to take action.

Id. Inspector Havrilla believes that most coal mines in his MSHA field office examine a contractor’s equipment before it is allowed to enter the mine. (Tr. 36). He testified that Ms. Ponikvar “is very sincere about safety and taking care of the miners” and that she was “extremely concerned” about these violations. (Tr. 37). Havrilla testified that she told Precision Engineering “in no uncertain terms that equipment is not operated that way on the Twentymile property; that she would not allow it; [and] that the machinery would have to meet all the criteria required by the CFR before she would allow it back on the Twentymile site. . . .” *Id.* She immediately ordered Precision Excavating to remove the equipment until the violative conditions were corrected.

Inspector Havrilla testified that Twentymile met the four factors set out in the Guidelines. First, by not examining the equipment before it was allowed to operate at the mine, Twentymile, through that omission, contributed to the occurrence of the violations. (Tr. 39-40). Second, by not examining the equipment at some time while it was operating at the mine, Twentymile similarly contributed to the violations. Third, Inspector Havrilla believed that Twentymile was exposed to the hazards created by the violations. If any of the conditions created a fire, Twentymile personnel could well respond to put out the fire. The mine’s fire brigade was practicing in an area about 1000 to 1500 feet from the refuse pile. They could be injured in fighting a fire. In addition, he believed that Twentymile miners could use the air compressor on the service truck and be exposed to the hazards described in the two citations issued for the compressor. Finally, Twentymile had control over the equipment as evidenced by the fact that Ponikvar immediately ordered that it be removed.

Twentymile contracted with Precision Excavating in August 2001 to perform work at the refuse pile. Twentymile followed its usual procedures when it entered into this contract. Twentymile advised Precision Excavating, both orally and in writing, that it was required to comply with all MSHA safety and health standards. Twentymile also provided Precision Excavating with a safety guide that included specific provisions requiring a preshift examination of all equipment and the repair of all safety defects. (Ex. R-27). The safety guide also contains provisions relating to each of the six cited conditions and it required the contractor to correct these conditions before the equipment was operated at the mine. Twentymile reserved the right to conduct periodic safety inspections of Precision Excavating’s work site and to terminate the

contract for safety infractions. Twentymile also required Precision Excavating to present evidence that all of its employees at the site have complied with MSHA training regulations.

For the two years prior to August 2001, Precision Excavating had not received any citations from MSHA despite that fact that it had previously worked for Twentymile and other mines during that period. (Tr. 85, 117; Ex. R-2). It also did not experience any MSHA reportable injuries during the previous four years. (Ex. R-29). When contractors come onto the mine, Twentymile employees make sure that the contractor's employees have all the MSHA-required training. These Twentymile employees provide the site-specific hazard training. These Twentymile employees do not examine equipment or vehicles that contractors bring with them and, according to Twentymile, they are not qualified to do so. (Tr. 106, 120). A significant number of contractor vehicles and equipment enter the mine each day, including 18 to 20 coal haul trucks. Twentymile does not routinely inspect a contractor's equipment as it enters the property. (Tr. 87-88, 123). Instead, it performs safety audits of various portions of its surface and underground facilities on a regular basis. (Tr. 102, 120). If contractor's equipment is within an area that is being audited by the safety department, that equipment is inspected. Twentymile also requires contractors to examine their own equipment for safety hazards and compliance with MSHA safety and health standards. Prior to August 2001, it was not MSHA's normal practice to cite Twentymile for violations that existed on a contractor's equipment. (Ex. R-30).

B. Analysis

The issue of who should be cited for contractor violations has been a source of contention since the passage of the Mine Act. An excellent discussion of the history of this issue can be found in Judge Todd Hodgdon's decision in *Amax Coal West Inc.*, 16 FMSHRC 2489, 2491-95 (Dec. 1994), which I do not repeat in this decision. Although the Commission recognized that the Secretary has wide enforcement discretion, it has held that Commission review of the Secretary's action in citing a production-operator is appropriate to guard against abuse of discretion. The Commission has issued two important decisions discussing this issue since Judge Hodgdon's decision, as discussed below.

In *Mingo Logan Coal Co.*, 19 FMSHRC 246 (Feb. 1997), the Secretary issued a citation to the contractor and to the production-operator because one of the contractor's employees had not received the required new miner training. The MSHA inspector issued a citation to the production-operator because he believed that its employees were affected by the violation. The production-operator contested the citation. The Commission held that in instances of multiple operators, the Secretary has wide enforcement discretion and "may, in general, proceed against either an owner-operator, his contractor, or both." *Id.* at 249 (citation omitted). The Commission determined that substantial evidence supports the conclusion that the Secretary met the standard in the Guidelines for enforcement against a production-operator because its employees were exposed to the hazard. The employees of the contractor and the production-operator often worked together. The Commission went on to hold that "even if the Secretary had failed to abide by the Guidelines, that fact would not prove fatal to his enforcement decision." *Id.* at 250 *citing*

Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533 (D.C. Cir. 1986). Finally, the Commission held that “holding owner-operators liable for violations committed by independent contractors promotes safety because ‘the owner is generally in continuous control of the entire mine’ and ‘is more likely to know the federal safety and health requirements.’ ” *Id.* at 251 citing *Cyprus Indus. Materials Co. v. FMSHRC*, 664 F.2d 1116, 1119 (9th Cir. 1981).

In *Extra Energy, Inc.*, 20 FMSHRC 1 (Jan 1998), the production-operator contracted with a security company to provide a night security guard at the mine on weekend nights. A security guard died of carbon monoxide poisoning at the mine as he sat in his own personal vehicle with the motor running. The Secretary issued citations to the contractor and to the production-operator. The production-operator contested the citations. The Commission noted that the production-operator had substantial involvement in the day-to-day operations at the mine and contracted for services with the security company. *Id.* at 6. The Commission also noted that the production-operator defined the contractor’s duties and retained some supervision over the contractor’s employees because it regularly reviewed reports from the guards. The Commission stated that the production-operator failed to provide the security guards with a structure to protect them from the elements and took no measures to ensure that their cars were safe, either by inspecting them or requiring that the contractor do so. *Id.* The Commission concluded that “[t]hrough its failure to inspect or ensure that the security guards’ vehicles were inspected, Extra Energy contributed to the equipment violation and to the continued existence of the violation.” *Id.* The Commission relied on the production-operator’s involvement in the mine’s affairs and its failure to inspect the vehicle or ensure that the vehicle was inspected in reaching its decision.

I hold that the Secretary did not abuse her enforcement discretion when she cited Twentymile for the six violations committed by Precision Excavating. First, Inspector Havrilla testified that he issued the citations to Twentymile because he believed that there was serious problem with contractor violations at the mine. The cited conditions were rather obvious so he was concerned that safety hazards on contractors’ equipment were not being adequately addressed. He believed that by issuing citations to Twentymile, the safety violations would get more immediate attention than if he only cited the contractor.

Second, the citations easily fit within the first factor set forth in the Guidelines. The Guidelines provide that “[e]nforcement action against a production-operator for a violation involving an independent contractor is normally appropriate . . . when the production-operator has contributed by either an act or by an omission to the occurrence of a violation in the course of an independent contractor’s work.”¹ As in *Extra Energy*, it is not disputed that the production-operator did not inspect the contractor’s equipment when it entered the mine or at any time after it started working at the refuse pile. More importantly, Twentymile did not “ensure that the [service truck and scraper] were inspected” by Precision Excavating before the work began.

¹ The Guidelines are not binding on the Secretary, as discussed above. In addition, the Guidelines provide that enforcement against a production-operator is appropriate if any of the four factors are met.

There can be no doubt that Twentymile took some important steps in this direction when it advised Precision Excavating that it must comply with MSHA's safety standards. The service contract required such compliance and Twentymile orally advised Precision Excavating at the time it was awarded the contract that it had to comply with MSHA's safety standards. In addition, the safety guide that it gave to Precision Excavating described the inspections that its employees must complete on the equipment. Nevertheless, there was no follow-through by Twentymile to "ensure" that the inspections were actually taking place. There is no evidence that anyone from Twentymile asked Precision Excavating's representatives if the equipment had been inspected for safety compliance when it entered the mine or after it arrived at the refuse pile. Twentymile requires contractors to present evidence that its employees meet MSHA's training requirements, but it does not have a similar policy requiring contractors to present evidence that it has inspected its own equipment for compliance with safety standards. Under these circumstances, it was not an abuse of the Secretary's enforcement discretion to cite Twentymile for the violations that Inspector Havrilla discovered because Twentymile did not take the steps necessary to ensure that the cited equipment was inspected for safety compliance. It was this lack of inspection that lead Inspector Havrilla to conclude that citations should be issued to both the contractor and Twentymile. Twentymile's failure to inspect the equipment or ensure that the contractor inspected the equipment was an omission that contributed to the violations.

The contested citations also fit within the fourth factor of the Guidelines. This factor provides that "[e]nforcement action against a production-operator for a violation involving an independent contractor is normally appropriate . . . when the production-operator has control over the condition that needs abatement." Although Twentymile did not have direct control over the cited equipment, it reserved the right to have any equipment removed from the property if it failed to comply with MSHA's safety standards. Twentymile also inspected contractor equipment on a periodic basis during safety audits. The evidence establishes that Twentymile exercised sufficient control over the scraper and service truck to meet this factor.²

Twentymile argues that the Secretary abused her discretion in this case "because she has exercised it inconsistently, in violation of her own policy guidelines, in violation of her promulgated regulations in 30 C.F.R. Part 45 and without considering the factors that the Secretary has identified as important in determining whether to cite a production-operator for an independent contractor's violation." (T. Br. 10). It contends that the Secretary's abuse of her enforcement discretion is confirmed by the fact that she has not proceeded pursuant to "objective ascertainable standards." (T. Br. 21). There must be "a rational, reasoned basis for an agency's action. *Id* at 22.

² I agree with Twentymile that its employees were not exposed to the hazards presented by the violations in any meaningful sense. Its employees would not be using a contractor's compressor. Moreover, a production-operator would always respond to a fire or other emergency involving a contractor's equipment. Under the Secretary's interpretation, virtually all contractor violations would expose the production-operator to citations under this factor.

I agree that the Secretary has generally issued citations to contractors for their violations without citing Twentymile. Nevertheless, the Secretary presented a rational, reasoned basis for her actions here. Inspector Havrilla determined that additional enforcement action was required to “cure” the problem of contractor violations. (Tr. 42). Ms. Ponikvar testified that the inspector told her that “it was time to teach us a lesson like he did at Colowyo,” another coal mine in the area. (Tr. 105). Twentymile faults Inspector Havrilla because his decision to cite Twentymile was subjective rather than the result of a reasoned analysis. I disagree that his actions were so subjective as to be arbitrary or capricious. It is true that Inspector Havrilla did not perform any sort of comprehensive analysis of the history of contractor citations at the Foidel Creek Mine. Nevertheless, he observed the obvious conditions on the service truck and scraper; he learned that this equipment had not been inspected by anyone with Precision Engineering or Twentymile; and, on that basis, he determined that the problem needed to be brought to the attention of the production-operator. I find that the Secretary, acting through Inspector Havrilla, did not abuse her enforcement discretion by citing both Precision Engineering and Twentymile for the subject violations.

Twentymile makes numerous other arguments that question the policy of citing a production-operator for violations committed by independent contractors. It believes that the safety of everyone working at mines would be best protected by citing only the contractor for its violations. Twentymile contends that, by shifting blame to the production-operator, the Secretary is failing to adequately impress upon contractors the importance of taking responsibility for compliance with MSHA safety and health standards. Although this public policy issue has been thoroughly discussed by the Commission and the Courts of Appeals, Twentymile’s arguments have not been adopted. Consequently, I also reject these arguments. It believes that these prior Commission and court holdings “merit reevaluation and Twentymile preserves its right to challenge such holdings.” (T. Br. 8, n. 2). I am required to follow Commission precedent in this decision. All of the arguments made by Twentymile that I have not specifically discussed in this decision are hereby rejected.³

³ Twentymile filed a proposed list of corrections to the hearing transcript along with its brief. I have reviewed these corrections and grant its request to amend transcript accordingly.

III. APPROPRIATE CIVIL PENALTIES

Section 110(i) of the Mine Act sets out six criteria to be considered in determining appropriate civil penalties. The parties stipulated, for purposes of this case, that the Secretary's determinations as to the criteria should be applied. The record shows that Twentymile has a history of about 312 paid violations at the Foidel Creek Mine during the 24 months preceding August 2001. (Ex. G-2). The Foidel Creek Mine produced over 7.2 million tons of bituminous coal in 2001. Twentymile and its affiliated companies produced over 61 million tons of bituminous coal in 2001. All of the violations were abated in good faith. The negligence and gravity criteria are as stated in each citation. The penalties assessed in this decision will not have an adverse effect on Twentymile's ability to continue in business. Based on the penalty criteria, I find that the penalties proposed by the Secretary are appropriate.

IV. ORDER

Based on the criteria in section 110(i) of the Mine Act, 30 U.S.C. § 820(i), I assess the following civil penalties:

<u>Citation No.</u>	<u>30 C.F.R. §</u>	<u>Penalty</u>
7618775	77.412(a)	\$55.00
7618777	77.400(a)	340.00
7618786	77.1110	55.00
7618788	77.404(a)	340.00
7618884	77.1103(a)	55.00
7618886	77.1103(a)	55.00
	TOTAL PENALTY	\$900.00

Accordingly, the six citations at issue in this case are **AFFIRMED** as set forth above and Twentymile Coal Company is **ORDERED TO PAY** the Secretary of Labor the sum of \$900 within 40 days of the date of this decision.

Richard W. Manning
Administrative Law Judge

Distribution:

Kristi L. Floyd, Esq., Office of the Solicitor, U.S. Department of Labor, P.O. Box 46550,
Denver, CO 80201-6550 (Certified Mail)

R. Henry Moore, Esq., Buchanan Ingersoll, 301 Grant Street, 20th Floor, Pittsburgh, PA 15219-
1410 (Certified Mail)

RWM