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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. WEST 84-19-M
A.C. No. 05-01054-05501

v.

San Aroya Mine or
San Aroya Pit

WALSENBURG SAND AND GRAVEL
COMPANY, INC.,
RESPONDENT

DECISION

Appearances: Robert J. Lesnick, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for the Petitioner;
Ernest U. Sandoval, Esq., Walsenburg, Colorado,
for the Respondent.

Before: Judge Carlson

This case, heard under the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the Act), arose from inspections of the respondent's sand pit near Walsenburg, Colorado on March 3 and March 7, 1983. On those dates, federal mine inspectors issued a total of 13 citations for violations of various safety standards promulgated by the Secretary of Labor pursuant to the Act. The respondent, Walsenburg Sand and Gravel Company, Inc. (Walsenburg), contested the Secretary's petition for imposition of civil penalties. The case was heard at Pueblo, Colorado, with both parties presenting evidence. Neither party wished to file briefs or other post-hearing submissions.

GENERAL BACKGROUND

The undisputed evidence shows that Walsenburg's San Aroya Pit, where the inspections occurred, is located in an old riverbed. Sand is extracted from the surface with front-end loaders. It is washed, screened, and stored in large piles at the site until needed. It is then loaded and trucked away. The company actually extracts and processes sand during warm-weather months only; frozen ground surfaces prevent removal during the remainder of the year. Sand is trucked away from storage piles throughout the year, however, as construction demands dictate.

On March 3, 1983, when the Secretary issued the first citation in this case, the plant or processing machinery was not in operation. The gates at the site were open, however, and two employees were engaged in loading sand and trucking it away.

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On March 7, 1983, the Secretary's representatives returned to the site again. At that time, the processing plant was in operation. Walsenburg employees were testing out the conveyors and other machinery preparatory to the beginning of production.

Walsenburg concedes that its activities affect commerce within the meaning of the Act.

REVIEW AND DISCUSSION OF THE
EVIDENCE RELATING TO ALLEGED VIOLATIONS

Citation No. 2098376

On March 3, 1983, Jake DeHerrera, a federal mine inspector, visited Walsenburg's San Aroya pit. On that occasion he observed approximately 150 feet of an electrical power line lying on the ground at the site. Closer inspection revealed that some of the poles intended to support the line had collapsed, and that the 220-volt line was energized. The last standing supporting pole for the line was immediately adjacent to a 500-gallon diesel fuel tank where respondent's front-end loader was refueled. The inspector issued a citation to Walsenburg charging a violation of the mine safety standard published at 30 C.F.R. 56.12-30. That standard provides:

When a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized.

Walsenburg does not deny that the inspector correctly described the condition. It did, however, deny that its management knew of the condition, and also asserted that the line was the responsibility of a local power company. Louis P. Vezzani, who described himself as "co-owner" of the sand and gravel company, further testified that the line had supplied power to a trailer home once situated on the pit site at the instance of the lessor of the site, and that it therefore served no purpose related to his company's operation.

I must conclude that the facts nonetheless establish a violation of the cited standard. The undisputed evidence shows that the last standing power pole to which the 220-volt line in question was attached also furnished 110 volts of power to the pump for the diesel tank. (See photograph, petitioner's exhibit 1.) Thus, the power distribution system in question was not totally divorced from that supplying the Walsenburg operation. Even were this not so, however, the downed 220-volt line lay on the Walsenburg site and presented a hazard to its employees. The evidence shows that the two Walsenburg miners present at the time of the inspection, one operating a truck, the other operating a loader, had unrestricted access to the area where the line lay. There were no warning signs or barricades to restrict their approach or to give warning. Moreover, the downed line was partially covered by snow - an indication

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that the line had been on the ground for some time (Tr. 27). It was Walsenburg's duty to notice the hazard presented by the line and to take the necessary steps to correct it. This was in fact easily accomplished shortly after the citation was issued. Walsenburg simply notified the San Isabel Electric Company, whose employees de-energized the line.

Citation No. 2009814

On his March 3, 1983, inspection, Mr. DeHerrera was accompanied by Inspector Elmer E. Nichols. Inspector Nichols testified that the 110-volt electrical outlet on the power pole near the diesel fuel tank and pump was not grounded. He therefore issued a citation charging a violation of the safety standard published at 30 C.F.R. 56.12-25. That standard, as pertinent here, provides:

All metal enclosing or encasing electrical circuits shall be grounded or provided with equivalent protection.

According to Inspector Nichols, he plugged an outlet tester into the receptacle on the pole. It showed that the energized outlet was not grounded. Terrance D. Dinkle, an electrical engineer from the staff of the MSHA Denver Technical Support Center, testified at length concerning hazards involved in this and other citations alleging electrical violations. Mr. Dinkle asserted that fuses or circuit breakers on circuits which lack proper grounding will not prevent electrical shock to persons coming into contact with the circuit, should there be an electrical fault.

Walsenburg presented no evidence on this citation. The evidence of record establishes the violation alleged.

Citation No. 2098378

Inspector DeHerrera visited Walsenburg's San Aroya Pit again on March 7, 1983. On that occasion he observed that the electrical service to the fuel pump at the 500-gallon diesel tank was not an "explosion type." He therefore charged Walsenburg with a violation of the safety standard published at 30 C.F.R. 56.12-2. That standard provides:

Electric equipment and circuits shall be provided with switches or other controls. Such switches or controls shall be of approved design and construction and shall be properly installed.

In his testimony Inspector DeHerrera indicated that the electrical connections lacked proper bushings, featured Romex cable rather than an "explosion type," and that the cable lacked a grounding wire.

I find no violation. The standard in question is quite specific: it applies only to switches and controls. The Secretary's evidence dealt with devices and equipment other than switches or controls. The inspector spoke of cables and bushings. Perhaps the bushings referred to were on a switch box or other control enclosure. The evidence, however, was unclear. The Secretary bears the ultimate burden of proof, and failed to carry it in this instance.

Citation No. 2098379

During the inspection on March 3, 1983, Inspector DeHerrera observed that the opening where electrical wires entered the breaker box on the service to the diesel fuel pump lacked bushings. He therefore issued a citation charging violation of the standard published at 30 C.F.R. 56.12Å8. That standard provides:

Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments. Cables shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

DeHerrera testified that the box was fastened to the power pole near the pump at about 5 to 5 1/2 feet above ground level. The standard requires that the openings be bushed, he asserted, for two reasons. First, without bushings, the metal edges of the openings may wear away the insulation on the wires, thus creating a short or fault where bare wire contacts the box. Second, the wires must be bushed to provide "strain relief." Without the bushings, he indicated, any pulling or other exterior strain on the wires could loosen them from their terminal connectors within the box, thus creating a fault. Mr. Dinkle, the Secretary's electrical expert, supported the inspector's testimony. The evidence shows that should an employee touch the box, once a fault had occurred, he could receive an electrical shock. Dinkle also testified that where a fault occurs in a circuit, a circuit breaker or fuse does not provide any assurance that a person coming in contact with the circuit will not receive a significant shock. (This particular observation was directed to all citations involving electrical fault hazards.) (Tr. 258).

Walsenburg presented no testimony concerning the citation. The Secretary's evidence establishes a clear violation of the standard.

This citation concerns another alleged defect at the diesel fueling station. During his visit to the San Aroya site on March 7, 1983, Inspector DeHerrera noted that the 500-gallon diesel fuel tank rested on a foundation of wooden timbers. DeHerrera believed this condition violated the safety standard published at 30 C.F.R. 56.44. That standard, as pertinent here, provides:

Flammable liquids shall be stored in accordance with standards of the National Fire Protection Association or other recognized agencies approved by the Mine Safety and Health Administration.

According to DeHerrera, The National Fire Protection Codes (published by the National Fire Protection Association) provide at chapter 30, section 25.1, that timbers may not be used as a foundation for a flammable liquids tank. The pertinent portion of the section declares:

Tanks shall rest on the ground or on foundations made of concrete, masonry, piling or steel.

DeHerrera testified that the timbers constituting the foundation appeared to be soaked with diesel fuel, thus posing a fire hazard.

I have a major difficulty with the Secretary's case. I am not certain that the standard in question absolutely forbids the use of timbers in foundations. The Secretary's position appears to be predicated upon that belief. I note that the N.F.P.A. publication allows tank foundations made of "piling." "Webster's Third New International Dictionary (1976)" defines a pile as "a long slender member usu. of timber, steel or reinforced concrete driven into the ground to carry a load, to resist a lateral force, or to resist water or earth pressure." (Emphasis added.) It also offers the first definition of "piling" as follows: "pile driving: the formation of (as of a foundation) with piles."

I am thus unable to conclude, as the Secretary would have me do, that the N.F.P.A. altogether proscribes the use of timbers in foundations. On the contrary, timber pilings are apparently welcome. Similarly, for tank supports above a foundation, timbers may also be used in some instances. Chapter 30, section 25.2 of the Code, which pertains to such supports for tanks storing flammable liquids, provides in part:

Single wood timber supports (not cribbing) laid horizontally may be used for outside aboveground tanks if not more than 12 inches high at their lowest point.

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No evidence in the present case clearly describes the function of the timbers which caused the inspector's concern. The inspector said only that the tank was not on a foundation that complied with the N.F.P.A. requirement because it was on "[t]imbers - wooden timbers" (Tr. 90).

Study of the photograph of the tank and its surroundings (respondent's exhibit 1) is not helpful. It shows that the pump adjacent to the tank is on a shadow-obscured platform of some sort, but the foundation of the tank itself is not visible. The tank appears to rest upon the ground.

Absent evidence that the timbers referred to were not pilings driven into the earth, I cannot hold that the Secretary proved a violation here. The citation will be vacated.

Citation No. 2098581

On March 7, 1983, Inspector DeHerrera noted that the drive flywheel on Walsenburg's sand classifier machine lacked an adequate guard. He cited this condition as a violation of the safety standard published at 30 C.F.R. 56.14Å1. That standard provides:

Gears; sprockets; chains; drive, head, and takeup pulleys, flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

According to DeHerrera, the 36-inch flywheel was located about 3 to 5 feet above the ground. He acknowledged that the rim of the wheel was properly guarded. The face of the wheel and the shaft, however, were not protected. DeHerrera maintained that as the classifier was in operation with two employees in the vicinity, the unguarded portion of the flywheel presented a hazard to those employees. Specifically, he believed that an employee checking the operation of the machine, or simply walking by, could stumble into the exposed, rotating parts and suffer injury.

For Walsenburg, Mr. Louis P. Vezzani testified that the center of the large flywheel was 7 feet above the ground, and that the operator's station was a considerable distance away. When the operator was not at his panel, Vezzani said, he would shut down the machine and thus could not be endangered. He did acknowledge, however, that there was some possibility that employees could come in contact with the wheel (Tr. 110).

The credible evidence establishes that although the hazard was not great, Walsenburg violated the guarding standard. Whereas the wheel did not present a great threat of injury, neither could it be said that it was sufficiently guarded by the rim guard, or that it needed no guard because of an inaccessible location.

Inspector DeHerrera, on his March 3, 1983, inspection, observed that the 220-volt electrical services to the feed conveyor and classifier(FOOTNOTE 1) drive motor were not protected by bushings where the wire or cable left the junction box. He also found that the box lacked a cover and was not weatherproof. He therefore issued a citation charging a violation of the safety standard published at 30 C.F.R. 56.128. The text of that standard has been previously set forth in this decision in the discussion of citation no. 2098379. It requires power cables and wires to be "insulated adequately where they pass in and out of electrical compartments." It similarly provides that cables shall enter compartments or other enclosures only through "proper fittings." Finally, it requires that "insulated wires other than cables" must be "substantially bushed with insulated bushings" where they pass through holes in metal frames.

For the reasons which follow, I must hold that no violation was proven. The cited standard makes a clear distinction between insulated wires and cables. It requires bushings for wires but not for cables. For cables it merely requires "proper fittings."

The evidence describing the lines in question was confusing. The inspector himself repeatedly referred to them as "cables." Mr. Vezzani also spoke of them as cables and insisted they were encased in conduit. Upon the record made, I must conclude that the Secretary did not establish that the lines were "wires" rather than "cables." Thus, the bushings violation was not proved.

That the junction box lacked a cover was undisputed. The only part of the standard which could conceivably apply to that defect, however, is that part which declares that cables "shall enter . . . electrical compartments only through proper fittings." Rather plainly, the provision applies only to that part of an enclosure through which the cable enters. I do not read it to impose requirements concerning other construction features of the box itself. Perhaps this provision would have had relevance had it been shown that the cable entered the box through the space left open by the missing cover, rather than through the bottom, top, or side. There was no such evidence, however.

I have the same problem with whether the box was "weather-proof." The Secretary's electrical engineer, Mr. Dinkle, made out a convincing case of the need for weatherproofing in such an installation (Tr. 242-244). He indicated that the box was not of an "approved design" because of the lack of full enclosure of

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connections and rubber gaskets to keep out moisture. His testimony, however, was directed to citation no. 2098378, earlier discussed in this decision, which involved 30 C.F.R. 56.12Å2. That is a standard which speaks to "approved design and construction" (Tr. 245Å246). Perhaps the term "proper fittings" referred to in the instant standard is a term of art among electrical experts, one broad enough to encompass weatherproofing. I doubt it, however. If it is, the record lacks expert testimony sufficient to demonstrate such a meaning. As the record stands, no violation is proved because the cited standard appears inapposite.

Citation No. 2098583

This citation also arose out of Inspector DeHerrera's visit to the pit on March 7, 1983. His inspection of the drive unit for the feeder conveyor revealed several pinch-points which were not guarded. Specifically, the drive chain and sprockets lacked any guarding. Also, the feeder mechanism itself - two large moving arms on an eccentric wheel - was unguarded. Finally, the tail pulley on the feed conveyor was unguarded. DeHerrera cited these conditions as violations of 30 C.F.R. 56.14Å1. That standard, requiring guarding of moving parts of machinery, is set out in the discussion of citation No. 2098581.

Mr. Vezzani, for Walsenburg, pointed out that guarding in the form of barrier-railings was available for the cited areas. The railings, however, were unbolted and lying on the ground (Tr. 140Å141). The inspector agreed that the railings (which were later installed to abate the alleged violations) would have been adequate guards (Tr. 139).

The evidence shows that Walsenburg violated the standard as alleged. The equipment was in operation and two employees of the operator were in the general vicinity. Some of the moving parts were partially guarded by virtue of their locations with respect to metal frames or other parts of the equipment. Such partial guarding by location, however, is not the equivalent of the full guarding required by the standard. There was a small but nevertheless realistic possibility that employees could have been injured.

Citation No. 2098584

On March 7, 1983, Inspector DeHerrera cited a grounding defect in the 110Åvolt service furnishing electric power to the diesel pump at the fueling station described earlier in this decision. The citation alleged a violation of the grounding standard set out at 30 C.F.R. 56.12Å25. The standard is set out in full in the discussion of citation no. 2009814 in this decision.

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According to Inspector DeHerrera, only two conductors went into the motor makeup box. The cable in question had a third or "ground" wire, but it was not attached to the motor frame to complete the ground. Presence of a circuit breaker, he testified, did not furnish protection equal to a proper grounding arrangement.

Walsenburg presented no evidence directed to this citation.

The Secretary's evidence clearly establishes the violation charged. The circuit had no ground as required by the standard, and the presence of a circuit breaker does not provide electrical fault protection equivalent to a ground.

Citation No. 2009968

On March 7, 1983, MSHA electrical specialist Larry J. Day found that the electric cable providing power to five 220-volt three-phase motors included an energized wire insulated with a green covering. Green wires, he testified, are universally used for noncurrent-carrying ground wires. Anyone familiar with electrical practice, according to Mr. Day, would, during maintenance, assume the green line was nonconductive. Since it was energized, however, a repair person could receive a severe shock. This would most likely occur should the green wire be attached to the equipment frame, as is the common practice. Mr. Dinkle, the Secretary's electrical engineering expert, supported Mr. Day's analysis.

The citation charged a violation of the standard published at 30 C.F.R. 56.12-30. That is the standard, discussed in connection with citation no. 2098376, which requires correction of "potentially dangerous conditions" in wiring or equipment.

Gary M. Vezzani, who described himself as an electronics engineer with three associate degrees in electronics, testified for Walsenburg. He agreed that it was improper to use the green wire. He suggested, however, that a careful repairman would not rely on the color of the wire, but would routinely test all wires to determine which were energized. He also appeared to suggest that if the energized green wire was mistakenly attached to the equipment frame, the repairman would be saved from injury by the circuit breaker. He disagreed with certain statements by the government's Mr. Nichols concerning grounding. Grounding, however, was not mentioned in the citation and is not an issue here.

I must conclude that the evidence establishes the violation charged. Walsenburg admits that the green wire was improperly used. I do not find credible the notion that repairmen would not rely on the color-coding of electrical wires. For the reasons discussed earlier in this decision, neither do I accept the proposition that circuit breakers can protect workers from electrical shocks from circuit faults. Such faults could develop from handling the energized green wire in the belief that it was a ground.

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Citation No. 2009970

On March 7, 1983, MSHA electrical specialist Larry Day issued a citation charging a violation of the safety standard published at 30 C.F.R. 56.12Ä4. That standard, as pertinent here, provides:

Electrical conductors exposed to mechanical damage shall be protected.

According to Day, a three-wire Romex cable attached to the side of a power pole was exposed to damage from vehicles. He testified that he saw cuts on the cable covering, and that protection from impact should have been provided by running the exposed lower 8 feet of the cable through a rigid pipe or flex pipe. If the wires were laid bare by an impact, he maintained, a fault could result which could energize the ground wire or cause a fire. This could endanger the two employees in the area.

Walsenburg presented no testimony on this citation. The evidence establishes that the respondent violated the standard in the manner alleged.

Citation No. 2009972

Day also cited respondent with a violation of the guarding standard, 30 C.F.R. 56.14Ä1, for an unguarded drive pulley powering the belt drive operating the shaker screen. He was unable to recall the height of the pulley from the ground, but could recall that it was accessible to persons in the area. The pulley had no guarding, he testified, and could therefore catch the clothing, hands or finger of any worker who might happen by.

Walsenburg furnished brief testimony on this citation by Louis Vezzani. He asserted that the drive pulley was ordinarily 8 feet above the ground, and thus above the reach of workers. He admitted, however, that on March 7, 1983, the day of the inspection and citation, excess sand accumulations near the shaker screen had raised the ground level sufficiently to put the pulley within reach of persons standing near the equipment.

The evidence shows that the standard was violated as alleged.

Citation No. 2009973

Day, on the March 3, 1983, inspection, also cited what he described as a guarding violation on the tail pulley of the shaker belt. The belt was moving and carrying material at the time he observed it. He maintained that the lack of a guard on the pulley constituted a violation of 30 C.F.R. 56.14Ä1, the guarding standard discussed several times previously in this decision. He recalled the height of the tail pulley to be 6 to 8 inches above the ground. The two employees who were running the plant, he testified, were exposed to the hazard created by this unguarded pinch-point.

For Walsenburg, Louis Vezzani testified that the part in question was not a tail pulley, but a roller which was best described as a mere shaft. Moreover, he contended that the end of the roller was 6 inches inside the frame of the conveyor, and was thus guarded by the frame. Day disputed this, claiming that despite the frame a worker walking by could catch loose clothing between the roller and belt and thus suffer injury. Vezzani did acknowledge that this could occur (Tr. 235-236).

Plainly, the violation here was minor, but there was nevertheless a foreseeable possibility of some injury. The citation must be affirmed.

SIGNIFICANT AND SUBSTANTIAL ISSUE

The Secretary contends that one of the 13 violations alleged in this case should be considered "significant and substantial," as that term is used in the Act. The charge is made in connection with citation no. 2098376, which involved the downed 220-volt electric line.

The Commission in Cement Division, National Gypsum Company, 3 FMSHRC 822 (1981) set out the test for determining whether a violation, in the words of the statute, ". . . could significantly and substantially contribute to the cause and effect . . . of a mine safety or health hazard." Such a violation, the Commission held, is one where there exists ". . . a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature."

For the reasons which follow, I conclude that the violation established does not rise to the "significant and substantial" level. The evidence shows that the energized 220-volt line, some of whose supporting poles had collapsed during the winter, did lie on the ground within the pit area. The evidence also shows, however, that its path did not take it close to any fixed machinery locations or other likely work places. It was attached to a pole next to the diesel fueling station, but that pole was still standing. Thus, the only likely exposure would occur if a loader operator should drive his vehicle over the downed portion of the line.

Mr. Dinkle, the Secretary's principal electrical expert, pointed out that rubber tires, contrary to common belief, have some conductive properties because of their high carbon content. He also explained, however, that the shock received from a driver's running over the downed line would likely amount to no more than a "tingle" (Tr. 256). That slight shock might be enough to cause a driver to lose control of the vehicle, which could lead to further physical harm, he testified.

This witness also indicated that a pedestrian close to the downed wire on damp earth could experience a minor shock (Tr. 255). On the other hand, if a person should absorb the full 220-volt load of the line, he would likely be electrocuted.

I find Mr. Dinkle's testimony credible. In the context of the other evidence, however, it does not tend to demonstrate that any likely encounter with the wire would ". . . result in an injury of a reasonably serious nature." On the contrary, it tends to show that injury, if any, would likely be transient and mild. It must be remembered that the sand processing plant was not yet in seasonal operation when the inspector issued his citation (March 3, 1983). Only two employees were on the grounds, and they were merely loading and trucking away sand from distant storage piles. It is not probable that they would have had occasion to be near the line at all. Had one of the workers approached it, it is overwhelmingly likely that he would merely have driven across it in a rubber-tired vehicle and have received, at most, a mild shock. The chance that a momentary loss of control of the vehicle from the shock would have resulted in an injury accident was remote. In the area of the pit where the line lay, there were really no objects to run into.

It is surely true that if a person were to absorb the full 220-volts carried by the line he would, as Mr. Dinkle said, be electrocuted. No witness, however, explained how this might happen. The evidence shows that most of the insulation was intact. Presumably, a severe or lethal shock could occur should a person decide for some reason to handle the line at a spot where the insulation was defective. I must note, however, that such an incident would have been most unlikely in view of the limited loading activity in progress at the time in question. One could, after all, conceive of similar unlikely possibilities for each of the other electrical violations in this case which the Secretary chose not to cite as "significant and substantial."

DETERMINATION OF APPROPRIATE PENALTIES

Except for the single citation alleged to have been "significant and substantial," (citation 2098376), the Secretary proposes a civil penalty of \$20.00 for all violations. For that single exception, the proposal is for \$68.00.

Section 110(i) of the Act requires the Commission, in penalty assessments, to consider the operator's size, its negligence, its good faith in seeking rapid compliance, its history of prior violations, the effect of a monetary penalty on its ability to remain in business, and the gravity of the violation itself.

The evidence shows that the Walsenburg operation was quite small. It further shows that the operator achieved speedy abatement of all the violative conditions. The operator had no history of prior violations. No evidence was presented concerning the effect

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of payment on the proposed penalty on Walsenburg's ability to remain in business. I must agree with the Secretary that there were no significant differences in the degree of negligence present in each of the violations for which the \$20.00 penalties were sought. I conclude that the negligence in each instant was in the low-to-moderate range. I also agree that the gravity of each of those violations was similiar and was not deserving of a weighty penalty. In each instance only the same two employees were exposed to the hazard, and their exposure was in terms of access to the dangerous conditions. Actual contact with the unguarded parts of equipment, or with the defective electrical wiring or fixtures was not likely. For these reasons I conclude that a modest penalty of \$20.00 is appropriate for each of those violations for which that sum was proposed.

That leaves for determination citation no. 2098376, for which the Secretary proposed the \$68.00 penalty. As previously indicated, I am not convinced that the 220Ävolt distribution line which had fallen to the ground constituted a "significant and substantial" violation under the Act. I must now go further and declare that that violation neither involved more operator negligence nor more gravity than the other violations proved by the Secretary. While the line did cross the grounds of the worksite, it was unlikely that any worker would encounter it unless he should drive across it in a rubber-tired vehicle. The probability that the vehicle operator would receive more than a mild electrical shock was quite remote. Consequently, the appropriate penalty for that violation is also \$20.00.

CONCLUSIONS OF LAW

Based upon the entire record herein, and in accordance with the factual determinations contained in the narrative portion of this decision, the following conclusions of law are made:

- (1) The Commission has the jurisdiction to decide this matter.
- (2) The respondent, Walsenburg, violated the mandatory safety standard published at 30 C.F.R. 56.12Ä30 as alleged in citation no. 2098376.
- (3) The violation was not "significant and substantial" within the meaning of section 104(d) of the Act.
- (4) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.12Ä25 as alleged in citation no. 2009814.
- (5) Walsenburg did not violate the mandatory safety standard published at 30 C.F.R. 56.12Ä2 as alleged in citation no. 2098378.

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(6) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.12Å8 as alleged in citation no. 2098379.

(7) Walsenburg did not violate the mandatory safety standard published at 30 C.F.R. 56.4Å4 as alleged in citation no. 2098380.

(8) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.14Å1 as alleged in citation no. 2098581.

(9) Walsenburg did not violate the mandatory safety standard published at 30 C.F.R. 56.12Å8 as alleged in citation no. 2098582.

(10) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.14Å1 as alleged in citation no. 2098583.

(11) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.12Å25 as alleged in citation no. 2098584.

(12) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.12Å30 as alleged in citation no. 2009968.

(13) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.12Å4 as alleged in citation no. 2009970.

(14) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.14Å1 as alleged in citation no. 2009972.

(15) Walsenburg violated the mandatory safety standard published at 30 C.F.R. 56.14Å1 as alleged in citation no. 2009973.

(16) The reasonable and appropriate civil penalty for each of the violations affirmed in this case is \$20.00.

ORDER

Accordingly, citations numbered 2098378, 2098380 and 2098582 are ORDERED vacated; all other citations are ORDERED affirmed; and Walsenburg is ORDERED to pay the Secretary of Labor a civil penalty totaling \$200.00 within 30 days of the date of this decision.

John A. Carlson
Administrative Law Judge

FOOTNOTE STARTS HERE-

1 Ultimately, the inspector acknowledged that the classifier was not involved (Tr. 128).