

CCASE:
SOL (MSHA) V. MANALAPAN MINING
DDATE:
19940809
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 93-792
Petitioner	:	A. C. No. 15-05423-03738
v.	:	
	:	Docket No. KENT 93-821
MANALAPAN MINING COMPANY, INC.,	:	A. C. No. 15-05423-03737
Respondent	:	
	:	Docket No. KENT 93-823
	:	A. C. No. 15-05423-03736
	:	
	:	Docket No. KENT 93-824
	:	A. C. No. 15-05423-03739
	:	
	:	Docket No. KENT 94-106
	:	A. C. No. 15-05423-03742
	:	
	:	Mine No. 1
	:	
	:	Docket No. KENT 93-793
	:	A. C. No. 15-16318-03579
	:	
	:	Docket No. KENT 93-794
	:	A. C. No. 15-16318-03580
	:	
	:	Docket No. KENT 93-888
	:	A. C. No. 15-16318-03582
	:	
	:	Docket No. KENT 94-19
	:	A. C. No. 15-16318-03584
	:	
	:	Docket No. KENT 94-46
	:	A. C. No. 15-16318-03585
	:	
	:	Mine No. 6
	:	
	:	Docket No. KENT 93-825
	:	A. C. No. 15-16733-03544
	:	
	:	Docket No. KENT 93-919
	:	A. C. No. 15-16733-03548
	:	
	:	Docket No. KENT 93-920
	:	A. C. No. 15-16733-03549

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: Docket No. KENT 93-921
: A. C. No. 15-16733-03550
:
: Docket No. KENT 93-993
: A. C. No. 15-16733-03551
:
: Docket No. KENT 94-47
: A. C. No. 15-16733-03552
:
: Mine No. 7
:
: Docket No. KENT 93-795
: A. C. No. 15-17016-03530
:
: Mine No. 8

DECISION

Appearances: Joseph B. Luckett, Esq., Office of the Solicitor,
U. S. Department of Labor, Nashville, Tennessee,
for the Secretary;
Susan C. Lawson, Esq., Buttermore, Turner, Lawson &
Boggs, P.S.C., Harlan, Kentucky, for Respondent.

Before: Judge Maurer

In these consolidated cases, the Secretary of Labor (Secretary) has filed petitions for assessment of civil penalties, alleging violations by the Manalapan Mining Company, Inc., (Manalapan) of various and sundry mandatory standards set forth in Part 30 of the Code of Federal Regulations. Pursuant to notice, these cases were heard before me on March 15-16, 1994, and May 17-18, 1994, in London, Kentucky. The parties filed posthearing briefs and proposed findings of fact and conclusions of law on July 1, 1994, which I have duly considered in writing this decision.

During the course of the trial of these cases and even subsequent thereto, the parties have discussed and negotiated settlements concerning most of the citations contained in these 17 dockets. I will deal with and dispose of those settled citations in this decision as well as decide the remaining issues concerning the still contested citations, in order, by docket number.

In addition to the arguments presented on the record in support of the proposed settlements, the parties also presented information concerning the six statutory civil penalty criteria found in section 110(i) of the Act. After careful review and consideration of the pleadings, arguments, and submissions in support of the proposed settlements, and pursuant to Commission Rule 31, 29 C.F.R. 2700.31, I rendered bench decisions

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approving the proposed settlements. Upon further review of the entire record, I conclude and find that the settlement dispositions which have been previously approved are reasonable and in the public interest, and my bench decisions are herein reaffirmed.

Docket No. KENT 93-792

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
3835991	5/24/93	75.400	\$1155	\$ 50*
3835992	5/24/93	75.364(b)(2)	1155	50*
3835993	5/24/93	75.203(e)(1)	690	690
		TOTAL		\$ 790

* Citation modified to delete "S&S" special findings.

Docket No. KENT 93-793

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
4239192	5/12/93	75.1725(a)	\$ 690	\$ 345
4239193	5/12/93	75.1725(a)	690	345
9885298	5/18/93	70.207(a)	595	595
		TOTAL		\$ 1285

Docket No. KENT 93-794

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
3836066	6/7/93	75.362(d)	\$1019	\$ 50*

* Citation modified to delete "S&S" special findings.

Docket No. KENT 93-795

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
9885286	4/9/93	70.100(a)	\$ 506	\$ 506
9885289	4/9/93	70.208(a)	900	900
		TOTAL		\$ 1406

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Docket No. KENT 93-821

The parties have agreed to settle four of the eleven citations included in this docket as follows:

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
4239218	5/17/93	75.516	\$ 431	\$ 50*
3835986	5/19/93	75.1101-3	431	431
3835988	5/19/93	75.1100-2(b)	431	50*
3835990	5/19/93	75.1101	431	50*

* Citation modified to delete "S&S" special findings.

Seven citations remain to be decided in this docket which were tried before me and were subsequently briefed by the parties. Citation No. 4239291 alleges a "significant and substantial" violation of the standard found at 30 C.F.R. 75.400 and charges as follows

Loose coal and float coal dust has been allowed to accumulate inside the power center on the 006 section.

Manalapan admits the violation of 30 C.F.R. 75.400 (see proposed conclusions of law), but disputes the "significant and substantial" special finding in this instance.

A "significant and substantial" violation is described in section 104(d)(1) of the Mine Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 C.F.R. 814(d)(1). A violation is properly designated significant and substantial "if based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 825 (April 1981).

In Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety

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hazard--that is, a measure of danger to safety-- contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

In United States Steel Mining Company, Inc., 7 FMSHRC 1125, 1129 (August 1985), the Commission stated further as follows:

We have explained further that the third element of the Mathies formula "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury." U. S. Steel Mining Co., 6 FMSHRC 1834, 1836 (August 1984). We have emphasized that, in accordance with the language of section 104(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. U. S. Steel Mining Company, Inc., 6 FMSHRC 1866, 1868 (August 1984); U. S. Steel Mining Company, Inc., 6 FMSHRC 1573, 1574-75 (July 1984).

Inspector Thomas testified that the accumulations were black in color and were on all of the electrical components in the power center and on the bottom of the power center, which was activated. He opined that any electrical arc could ignite the accumulations. He therefore reasoned that it was reasonably likely that the power center could explode, and at least one miner could be expected to suffer burns or other reasonably serious injuries as a result.

Inspector Thomas has personally had a previous bad experience with this type of violative condition in that a power center once exploded when he was working nearby and he was hospitalized for 4 to 5 days after the incident.

Mr. Gluck also testified that float coal dust is volatile matter which will burn when ignited. He further opined that the presence of float coal dust inside a power center on and near energized electrical components presents a clear danger. There are numerous potential ignition sources, such as a heat rise, or a malfunction causing a short circuit or a break down of an electrical component could cause an electrical arc. Insulators sometimes will break down due to atmospheric conditions, and these can cause an electrical arc. Mr. Gluck also testified that power centers have been known to melt down or malfunction and catch on fire. He testified that the lowest temperature of an electrical arc would be around 1150 to 1200 degrees Fahrenheit. A temperature of only 900 degrees Fahrenheit will ignite float coal dust.

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Finally, Mr. Gluck testified that when turning the power on or off a power center which uses a knife blade system could result in an electrical arc at the knife blade switches. The act of putting a breaker in could also result in an electrical arc. Inspector Thomas testified that the power would have to be turned off on the power center to move it, and he stated that the power center is moved about every 2 or 3 days to pull it closer to the working face. It would then be turned back on.

Mr. Fred Kelly, who testified on behalf of Manalapan, agreed that there is a danger of arcing and sparking when the power center is turned on or off, but he opines that it would be outside the power center and away from the accumulated float coal dust inside. He also testified that there could be arcing when the disconnect switch at the power center is activated. This arcing would admittedly be inside the power center but 16 to 20 inches above the floor, where in his opinion, at least, it would be improbable for the loose coal or float coal dust to come into contact with it and thereby cause an ignition. But, I note here that Mr. Kelly did not observe the float coal dust accumulations cited by the inspector.

In my opinion, the Mathies test has been met. The record is replete with testimony from various witnesses that electrical arcs and sparking can and do occur inside the power center and although the respondent's witnesses minimized the risks, they generally agreed that the arcing and sparking is possible. The potential ignition sources combined with the accumulations of loose coal and float coal dust found inside the power center is sufficient, in my opinion, to make this an "S&S" violation.

Therefore, I conclude that there was a reasonable likelihood that the hazard contributed to by the violation herein would result in an injury-producing event. Accordingly, I conclude that it has been established that the violation herein was significant and substantial and serious.

Upon careful consideration of all of the statutory criteria in section 110(i) of the Act, including the Manalapan Mining Company, Inc.'s own production figures, making it a "large" operator in its own right, I assess a civil penalty of \$450.

Citation No. 4239220 alleges a "significant and substantial" violation of the standard found at 30 C.F.R. 77.1605(k) and charges as follows:

Berms were not provided on the access road to the surge impoundment.

On May 17, 1993, Inspector Thomas and another inspector observed two cars coming across the elevated road to the left of the ponds at what he describes as a high rate of speed. He was

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unable, however, to state what speed that was. The inspector claimed that if the driver lost control of his vehicle, he could reasonably be expected to go off either side of the road and be involved in a serious accident, resulting in at least broken bones.

The road is admittedly not provided with berms, but is usually blocked by wire ropes. The road is not wide enough to put berms on and still allow the necessary access to dip the ponds due to the width of the required equipment for that operation. That is why the road is blocked and the company has advised the miners not to use it.

In my opinion, when they do drive on it, it is a violation, and could in the proper circumstances, be a significant and substantial violation. It is up to the company to keep their employees off of it. A failure to do so will result in the assessment of civil penalties.

Roy Ellis, a foreman for Manalapan, testified that the road could not be traveled at an unsafe or high rate of speed due to the nature of the road, and Inspector Thomas admitted that the road in question was in better shape than the road the miners normally travel because it is used infrequently.

Giving Manalapan the benefit of the doubt on a close issue, I conclude that the Secretary has failed to prove by a preponderance of the evidence that this was a significant and substantial violation. The citation will be so modified.

Reading the record as a whole and considering that this was the second such incident in as many months, I am going to assess a civil penalty of \$100 for the violation found herein.

Citation Nos. 3835982, 3835984, 3835985, 3835987, and 3835989 were all issued on May 19, 1993, by Inspector Elmer Thomas. All allege violations of 30 C.F.R. 75.400 in the vicinity of various belt lines in the No. 1 Mine.

Citation No. 3835982 was issued on the A belt at the No. 1 Mine. This is the first belt as the mine is entered. Inspector Thomas testified that he observed accumulations of float coal dust and loose coal under and alongside the belt for a distance of approximately 150 feet. The accumulations were black in color and from paper thin to 3 or 4 inches in depth. The belt was running when the violation was observed, and the belt was not trained. This means that the belt was not running evenly, that the metal splices of the belt were hitting the bottom stands of the belt, creating metal to metal contact which could cause sparking.

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Manalapan does not dispute the violation, but does contest the "significant and substantial" special finding. I will treat the "S&S" issue for all five of these "accumulations" citations together at the end of this section.

Citation No. 3835984 was issued on the B belt at the No. 1 Mine. This belt dumps on the A belt. Inspector Thomas observed accumulations of float coal dust and loose coal extending from the head drive the entire length of the belt to the tail roller. The accumulations extended from the track, under the belt, to the rib side, a distance of approximately 12 feet. The accumulations were black in color and more extensive than those found at the A belt, from paper thin to perhaps a couple of inches thick at different locations.

Manalapan likewise does not dispute the fact of this violation, but does contest the "S&S" special finding.

Citation No. 3835985 was issued on the C belt at the No. 1 Mine. The C belt dumps on the tail roller of the B belt. The citation was issued because the belt control box for the C head drive was full of float coal dust. This control box is about 2 feet wide and approximately 10 to 12 feet long. It is located approximately 5 to 6 feet from the belt. It supplies electricity to the drive motors on the belt, and contains various electrical conductors and electrical connections.

Inspector Thomas testified that the box was opened and was found to contain float coal dust, black in color, both suspended inside the box and on the electrical components inside the box. The belt was running at the time the violation was discovered.

Once again, Manalapan, while admitting the violation, disputes the "S&S" special finding.

Citation No. 3835987 was also issued on the C belt at the No. 1 Mine. The C belt, like the other belts previously discussed, had accumulations of loose coal and float coal dust under and alongside the belt. The accumulations were at various locations, and were black in color. They were from paper thin to 2 to 3 inches in depth and extended from the mine ribs to the track, a distance of approximately 9 to 10 feet.

The belt was running at the time the violation was observed. This belt was also not trained, and was running off to one side so that it was hitting the legs of the stands on the bottom rollers. This created a danger of sparking due to the metal to metal contact.

Manalapan admits the basic violation, but disputes the "S&S" finding.

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Citation No. 3835989 was issued on the E belt at the No. 1 Mine. The electrical control box for the E belt was found to contain float coal dust. The dust was black in color and was on the electrical components in the control box.

Manalapan, as in the previous instances, admits the basic violation of 30 C.F.R. 75.400, but once again disputes the "S&S" finding.

All five of these citations have as a common theme accumulations of loose coal and/or float coal dust either under and alongside the various belts or inside the belt electrical control boxes.

It is beyond dispute that in the event an ignition did occur, the loose coal and coal dust accumulations could contribute to the hazard of fire and/or explosion or at the very least, propagate the results of an otherwise unrelated explosion and/or fire which could in turn spread throughout and even beyond the cited areas. Apropos of this point, I note that the cited belts were all connected and Mr. Gluck testified that after an ignition the fire will travel as far as there is fuel to sustain it. He likened a flame to a sheet of paper which when ignited will propagate itself. In front of the ignition is a compression of air caused by rapid expansion of the flame path. This air pressure will cause float coal dust to be thrown into suspension. Thus an ignition at one belt will travel the length of the various belts if each contains accumulations to propagate the fire. Since the various belts all contain accumulations, any ignition source on one belt makes an accident as reasonably likely to spread to all.

The record establishes a number of potential ignition sources. One is the belt rollers turning in the coal accumulations under the belt. There is a clear potential for friction ignition should one or more of these rollers become stuck and get hot. There was testimony that a malfunction of this sort can create sufficient heat to ignite coal accumulations. Another identifiable ignition source is the fact that in several places the belt itself was not running true and was rubbing on the framework of the conveyor, thereby creating friction heat as well as the potential for sparking from the metal splices on the belt itself. Additionally, there are the electrical components, such as those inside the control boxes that are adjacent to the belt lines, and which were found to contain float coal dust. The inside of the electrical contactor or belt starter which was presented at the hearing was heavily blackened due to sparking, and the outside, although less blackened, still showed some evidence of sparking.

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There was also testimony to the effect that much of these accumulations were wet or at least damp, and/or mixed with noncombustible materials. I accept Mr. Gluck's opinion that while this factor may make them harder to ignite, they will still burn. Damp coal dries in the presence of fire and heat and wet coal can dry out in a mine fire and subsequently ignite.

The Commission has previously held that a construction of 30 C.F.R. 75.400 "that excludes loose coal that is wet or that allows accumulations of loose coal mixed with noncombustible materials, defeats Congress' intent to remove fuel sources from mines and permits potentially dangerous conditions to exist." Black Diamond Coal Mining Company, 7 FMSHRC 1117, 1121 (August 1985). It has further held that dampness is not determinative of whether a coal accumulation violation is "significant and substantial" or not. Utah Power & Light Company, 12 FMSHRC 965, 970 (May 1990).

Therefore, I find that the circumstances in these citations satisfy the Commission's significant and substantial criteria set out in Mathies, supra. Accordingly, I find that the above five cited violations of 30 C.F.R. 75.400 were properly designated as significant and substantial and serious.

After considering the statutory criteria contained in section 110(i) of the Act, I assess a civil penalty of \$400 for each of the five citations. In so doing, I considered only Manalapan Mining Company's production record and violation history as requested by Manalapan.

Docket No. KENT 93-823

The parties have agreed to settle 17 of the 20 citations included in this docket as follows:

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
3000232	2/26/93	75.400	\$ 431	\$ 50*
3000233	2/26/93	75.400	506	50*
3000234	3/1/93	75.517	50	50
3000237	3/1/93	75.503	431	50*
3000238	3/1/93	75.523-3	431	431
3004283	3/2/93	75.364(b)(2)	50	50
3004289	3/4/93	75.517	50	50
3000213	3/10/93	75.1100-2(d)	431	50*
3000214	3/10/93	75.360(b)(5)	50	50
3000215	3/11/93	75.360(b)	431	431
3000216	3/11/93	75.400	431	431
3000218	3/11/93	75.202(a)	431	431
3000219	3/11/93	75.220	431	431

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CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
4239005	3/18/93	75.706	50	50
4239006	3/18/93	75.370(a)(1)	431	50*
4239007	3/18/93	75.403	1155	1155
3835981	5/17/93	75.312(f)	50	Vacated

* Citation modified to delete "S&S" special findings.

Three citations remain to be decided in this docket which were tried before me and were subsequently briefed by the parties.

Citation No. 3000229 alleges a "significant and substantial" violation of the standard found at 30 C.F.R. 75.1101 and charges as follows:

The deluge type fire suppression system provided for the mmu-004 section belt was not operative when tested.

Manalapan admits the violation of 30 C.F.R. 75.1101, but disputes the "significant and substantial" special finding in this instance.

A deluge-type system is activated by heat and automatically sprays water over the head drive and belt for a distance of 50 feet. The Safety Director for the respondent conceded that this system is the only automatic fire suppression system in the area of the belt head. The belt itself is 700 feet long, but the deluge system only covers the first 50 feet from the head drive. Inspector Langley testified that when the test button was pushed the water would not spray on the belt head drive. The belt was running at the time of the inspection.

Inspector Langley opined that the negligence was "moderate," because the system is supposed to be checked weekly and he believed that the respondent should have been aware of the problem. He also opined that an accident was reasonably likely due to a number of possible ignition sources along the belt line, including possible friction sources and the presence of several electrical cables and the belt starting box. Inspector Langley stated that one person would probably be affected by the violation, as there is a man assigned to take care of all of the belts at the mine. This person could be burnt or overcome by smoke if there were a fire. Also the smoke could travel to the section and affect every person on the section with smoke inhalation.

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Mr. Gluck testified that most fires which occur on belt lines take place at the head drive. This is an area where float coal dust accumulates and there are electrical components in the area to run the head drive. Due to the problem of fires at head drives, certain regulations, such as the one requiring a deluge-type water spray system, were promulgated.

Manalapan's position is that this violation was not "significant and substantial" due to the immediate lack of an ignition source. It is the position of the Secretary that, when dealing with a regulation that is designed to only take effect in an emergency, the existence of the emergency must be presumed when determining whether the violation is significant and substantial. Obviously the regulation at issue here presumes the existence of an emergency, a fire, when it requires a deluge of water to put the fire out.

It is clear from the testimony that fires are a definite hazard at belt heads. Inspector Langley testified that the drive roller at the head drive presents a possible source of ignition due to friction. The belt itself is fire resistant, but not fire proof, and could catch on fire. Although fire hose and fire extinguishers were present, the violation was still considered significant and substantial by the inspector because there is no one permanently stationed at this belt. The assigned belt man covers all the belts in the mine.

I therefore find that the Mathies, supra, test has been met. It is clear that this violation is significant and substantial. Without the deluge system a fire could clearly become far worse and someone could become injured when he finally arrived to fight the fire or could be overcome by smoke even prior to arriving on the scene. To find otherwise, that the petitioner must prove that an actual ignition source presently existed would ignore the fundamental hazard of fires at the head drives that the regulation was designed to prevent.

With regard to the operator's negligence concerning this violation, I find that it is "low" vice "moderate" because the deluge system was checked on a weekly basis as required, but yet became inoperative without warning or notice to the operator.

Considering the statutory criteria, I assess a civil penalty of \$300 for the "S&S" violation of 30 C.F.R. 75.1101 found herein.

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Citation No. 3000217 issued by Inspector Langley on March 11, 1993, alleges a "significant and substantial" violation of the standard found at 30 C.F.R. 75.202(a) and charges as follows:

Loose coal ribs were observed along the coal pillars of the mmu-400 section.

Manalapan admits the violation of 30 C.F.R. 75.202(a), but disputes the "significant and substantial" special finding associated with the instant citation.

Inspector Langley testified that this citation was issued because loose coal ribs were observed along the coal belts on the working section of the mine. The ribs were approximately 4 1/2 to 5 feet in height and anywhere from 5 to 10 feet in length. These ribs had pulled or gaped away from the pillars from 2 to 3 inches. There were approximately 11 or 12 ribs involved in the violation covering a distance of approximately 108 feet. He also testified that the section foreman and a repairman are generally working in the area where the violative conditions were found. The inspector opined that it was reasonably likely that an accident might happen, because these persons could be struck by the coal ribs if they should fall off or slip off. Inspector Langley stressed the number of loose ribs which were present and the fact that the section foreman certainly would be in the area on foot. It is obvious that this violation meets the Mathies test. It is uncontradicted that there were people present in the area of the violation with a significant number of loose coal ribs. These ribs could easily fall or "roll" causing broken bones or greater injuries to a miner.

Accordingly, I will affirm the citation, in its entirety, and assess the proposed civil penalty of \$431 for the violation.

Citation No. 4239003 is similar to Citation No. 4239220 in that it involves the same road, the same unlocked gates, the same lack of berms, and the same mandatory standard. It preceded, by 2 months, the citation contained in Docket No. KENT 93-821 and discussed earlier in this decision. Basically, it is an elevated road that is not provided with berms, but is usually blocked by wire ropes. But, on the date the citations were issued, the ropes were down and the road was being traveled in violation of the standard.

My decision is the same regarding this Citation No. 4239003 as it was concerning Citation No. 4239220 in the previous docket, but since this was the first violation in point of time, I assess a penalty of \$50 for the non "S&S" violation of the standard.

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Continuing with settlements, as before:

Docket No. KENT 93-824

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
3000220	3/11/93	75.364(b)(2)	\$1134	\$ 50
4239001	3/11/93	75.364(a)(2)(iii)	1134	50
3835983	5/19/93	75.1101-3	431	431
		TOTAL		\$ 531

Docket No. KENT 93-825

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
3828418	11/19/92	75.1710	\$ 362	\$ 136
2787574	4/13/93	75.400	2301	2301
2787575	4/13/93	75.400	431	431
4238594	4/14/93	75.518	431	215
4238595	4/14/93	75.518	431	216
4238741	4/14/93	75.503	50	50
4238743	4/14/93	75.400	431	50*
4238799	4/14/93	75.1715	50	50
4238800	4/14/93	75.220	431	50*
4239261	4/14/93	75.333(b)(2)	431	50*
4239262	4/14/93	75.220	431	431
3835662	4/15/93	75.220	431	431
3828818	5/11/93	75.1719-1(b)	431	50*
3828819	5/11/93	77.502	431	50*
		TOTAL		\$ 4511

* Citation modified to delete "S&S" special findings.

Docket No. KENT 93-888

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
2793753	6/7/93	75.362(d)(1)(i)	\$ 793	\$ 793
2793754	6/7/93	75.1102	690	690
2793755	6/7/93	75.400	690	690
2793756	6/9/93	77.205	690	50*
2793757	6/9/93	75.1722(a)	690	690
4257403	6/9/93	75.1101	690	345

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CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
4257796	6/15/93	75.517	267	133
4257404	6/16/93	77.410(c)	690	345
4257797	6/16/93	75.807	690	345
2793758	6/21/93	77.1605(d)	690	Vacated
2793759	6/21/93	77.1606(c)	690	Vacated
4257406	6/21/93	75.807	690	345
2793760	6/22/93	75.1722(a)	690	50*
TOTAL				\$ 4476

* Citation modified to delete "S&S" special findings.

Docket No. KENT 93-919

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
4257930	6/24/93	75.380(d)(1)	\$ 903	\$ 50*
4257934	6/24/93	75.1719-1(e)(5)	431	431
4257936	6/24/93	75.1100-3	431	50*
4257937	6/24/93	75.1725(a)	431	431
4257940	6/24/93	77.1109(d)	431	50*
TOTAL				\$ 1012

* Citation modified to delete "S&S" special findings.

Docket No. KENT 93-920

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
4238597	4/14/93	75.503	\$ 750	\$ 50
2787576	4/15/93	50.10	950	Vacated
2787577	4/15/93	75.902	3800	3230
2787578	4/15/93	75.601-1	5700	4845
2787580	4/15/93	75.400	5900	5900
3828782	4/16/93	75.400-2	506	Vacated
3828783	4/16/93	75.1101-23(c)	690	100
4248401	6/28/93	75.364(a)(2)(iii)	690	50*
TOTAL				\$14175

* Citation modified to delete "S&S" special findings.

~1742

Docket No. KENT 93-921

Section 104(d)(2) Order No. 3828600, which was issued on June 29, 1993, and alleged a violation of 30 C.F.R. 75.220 was vacated. This is the only citation/order contained in this docket and it is therefore dismissed.

Docket No. KENT 93-993

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
9885302	6/3/93	70.100	\$1019	\$ 1019

Docket No. KENT 94-19

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
2793766	8/4/93	75.523	\$ 690	\$ 690
2793767	8/5/93	75.503	690	50*
2793768	8/5/93	75.606	690	50*
2793769	8/5/93	75.1100-3	267	267
TOTAL				\$ 1057

* Citation modified to delete "S&S" special findings.

Docket No. KENT 94-46

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
2793771	8/11/93	75.1106-3(a)(2)	\$ 690	\$ 50*
2793776	8/23/93	75.400	690	50*
2793778	8/24/93	75.312(f)	1610	Vacated
4257749	8/26/93	75.400	690	50*
TOTAL				\$ 150

* Citation modified to delete "S&S" special findings.

Docket No. KENT 94-47

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
9885300	6/3/93	70.101	\$1019	\$ 1019

~1743

Docket No. KENT 94-106

CITATION NO.	DATE	30 C.F.R. SECTION	ASSESSMENT	SETTLEMENT
9885299	5/24/93	70.101	\$ 1779	\$ 750
2996296	8/11/93	75.202(a)	690	690
2996298	8/12/93	75.220	690	50*
4040121	8/13/93	75.1722	690	345
4040122	8/13/93	75.220	690	50*
3835565	8/23/93	75.1720(a)	690	690
		TOTAL		\$ 2575

* Citation modified to delete "S&S" special findings.

Turning now to the issue of the basis upon which I arrived at the civil penalties I assessed in these cases or approved as the result of settlements arrived at between the parties in these cases, the starting point is always section 110(i) of the Mine Act.

The statutory standards for assessing civil penalties for violations are set forth in section 110(i) of the Act, as follows:

The Commission shall have authority to assess all civil penalties provided in this chapter. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this chapter, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

If an operator contests the Secretary's proposed civil penalties, the Secretary brings an action before the Commission. Hearings before a Commission Administrative Law Judge are de novo and the judge applies the six statutory criteria contained in section 110(i) of the Act without consideration of the Secretary's administrative formulas and regulations for proposing civil penalties. See *Sellersburg Stone Co. v. Federal Mine Safety and Health Review Commission*, 736 F.2d 1147 (7th Cir. 1984).

~1744

This is precisely how I arrived at the penalties I am assessing in these cases. I considered Manalapan to be a "large" coal operator and considered evidence concerning its production record and violation history alone, as well as its negligence, the gravity of each violation and gave credit for good faith abatement of the subject citations.

ORDER

In view of all the foregoing findings and conclusions, all the citations included in these dockets are affirmed, modified or vacated as recited in the body of this decision and it is ORDERED that the respondent, Manalapan Mining Company, Inc., PAY the assessed civil penalties of \$41,778 to the Secretary of Labor within 30 days of this decision. Upon receipt of payment, these cases are DISMISSED.

Roy J. Maurer
Administrative Law Judge

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