

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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February 9, 2011

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2009-418
Petitioner	:	A.C. No. 11-02632-179544-01
	:	
	:	Docket No. LAKE 2009-419
v.	:	A.C. No. 11-02632-179544-02
	:	
	:	Docket No. LAKE 2009-494
CENTRE CROWN MINING, LLC.,	:	A.C. No. 11-02632-185333
Respondent	:	
	:	Docket No. LAKE 2009-542
	:	A.C. No. 11-02632-188265
	:	
	:	Mine: Crown III Mine

DECISION

Appearances: Natalie Lien, Esq., Office of the Solicitor, U.S. Department of Labor,
Denver, Colorado, for Petitioner;
Hershiel Hayden, Knoxville, Tennessee, for Respondent.

Before: Judge Rae

This case is before me on a petition for assessment of civil penalties filed by the Secretary of Labor, acting through the Mine Safety and Health Administration, against Centre Crown Mining, LLC, pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, (the "Mine Act" or "Act"),30 U.S.C. §§ 815 and 820. A hearing was held on October 26, 2010 in Evansville, Indiana at which the parties presented testimony and documentary evidence on sixteen (16) violations issued by MSHA to Centre Crown Mining, LLC, ("Crown"), at the Crown III Mine.

The parties settled 44 violations prior to the hearing which are listed in Gov. Ex. 46. I approve the proposed settlement herein. The Respondent requested the opportunity to submit financial statements to contest his ability to pay the proposed penalties and provide an affidavit from a union representative to contest citation no. 6675284, Docket No. LAKE 2009-542. By email dated January 2, 2011, Mr. Hayden indicated that he was withdrawing the objection to the assessed penalties with regard to their ability to remain in business and that they would not be submitting the affidavit. Ct. Ex. 1. The Secretary filed a post-hearing brief.

The parties entered into stipulations contained in the Secretary's Prehearing Response pleading. Specifically, they stipulated that: (1) Crown III Mine is subject to the jurisdiction of the Act, (2) Centre Crown Mining, LLC is an operator within the meaning of the Act, (3) I have jurisdiction over the proceedings, (4) Centre Crown Mining, LLC owns Crown III Mine, (5) the exhibits are authentic, (6) the inspector who signed the citations was acting within his official capacity as an authorized representative of the Secretary of Labor, and (7) the operator demonstrated good faith in abating all cited conditions.

The parties also stipulated that the proposed penalties would not affect Centre Crown Mining's ability to remain in business. That stipulation was withdrawn; however, based upon the above referenced email, the ability to remain in business is no longer at issue.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Crown operated the underground bituminous coal mine known as the Crown III Mine ("Crown III") from June 15, 2008 until July 17, 2009. The mine produced 1,360,392 tons of coal in 2009. Between January and May, 2009, several MSHA inspectors conducted regular inspections of the Crown III mine and issued a number of citations for violations of the Act, including the sixteen addressed herein.

1. Citation No 6675539 (Gov. Ex. 1)

Inspector Chad Lampley has been an MSHA inspector for 3 ½ years. Prior to that, he was a miner for almost two years performing general labor, roof bolting, driving underground equipment and performing mechanic's duties. He holds a master's degree in applied science and an associate's degree in auto mechanics. On January 29, 2009, Inspector Lampley, conducted a regular inspection of Crown III and issued Citation No. 6675539 to Crown for a violation of 30 C.F.R. §75.1725(a). The citation states:

The main west belt was not being maintained in safe operating condition in that a bottom roller was missing and the belt was rubbing the metal frame. This condition was present between crosscuts 94 & 95. Due to a failed bearing a top roller was turning against the structure, stopping at times while in contact with the conveyor belt. This condition was present at crosscut 96. Both conditions create a frictional heat source. The belt was immediately removed from service by the operator.

The inspector assessed the gravity of the violation as reasonably likely to cause in an injury resulting in lost workdays or restricted duty. He designated the violation as significant and substantial affecting two persons and the operator's negligence as moderate. The proposed penalty is \$687.00.

a. The Violation

Section 75.1725(a) states that mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately. Inspector Lampley testified that the conveyor belt located between crosscuts 94 and 95 was missing several rollers causing the belt to cut into the metal frame thereby causing friction. Similarly, a top roller on the belt at crosscut 96 was turning against the

frame cutting into metal below. This resulted in a heat source. Coal was being moved on the belt at the time he observed these conditions. At crosscut 94/95, the belt line is adjacent to the travelway used by the miners. It is also the secondary escapeway. There is common air between the travel way and the belt line. Tr 22-26.

Crown does not dispute that the violation occurred but argues that the gravity should be assessed as unlikely to cause an injury. Tr 44. This would necessitate a finding that the violation was not significant and substantial.

b. Significant and Substantial

A violation is significant and substantial (“S&S”) if the violation is “of such a nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard.” 30 U.S.C. §814(d)(1). There must be “a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature.” *Cement Div., Nat’l Gypsum Co.*, 3 FMSHRC 822, 825 (Apr. 1981). Under the *National Gypsum* definition, “the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard –that is, a measure of danger to safety – contributed to by the violations; (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.” *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (Jan. 1984)(footnote omitted); see also, *Buck Creek Coal, Inc. v. MSHA*, 52 F.3d 133, 135 (7th Cir. 1999); *Austin Power, Inc. v. Secretary*, 861 F.2d 99, 103-104 (5th Cir. 1988), *aff’g Austin Power, Inc.*, 9 FMSHRC 2015, 2021 (De. 1987) (approving *Mathies* criteria).

In order to meet the requirements of the third, and most difficult to establish, element of the *Mathias* formula, the Commission has provided the following guidance:

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., Inc.*, 6FMSHRC 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 Co., Inc.* 6 FMSHRC 1866, 1868 (August 1984); *U.S. Steel Mining Co., Inc.*, 6 FMSHRC 1573- 1574 (July 1984).

This evaluation is made in consideration of the length of time that the condition in violation existed prior to the citation and the time it would have existed if normal mining operations had continued. *Elk Run Coal Co.*, 27 FMSHRC 899, 905 (Dec. 2005); *U.S. Steel Mining Co., Inc.*, 6 FMSHRC at 1574. The question of whether a particular violation is S&S depends upon the surrounding circumstances of the violation. *Texasgulf, Inc.*, 10 FMSHRC 498 (Apr. 1988); *Youghioghen & Ohio Coal Co.*, 9 FMSHRC 2007 (Dec. 1987).

As stated above, Crown does not dispute that the mandatory safety standard was violated. Nor did they contest the moderate degree of negligence assessed. Inspector Lampley testified that based upon his experience, he properly designated the violation as S&S because there was an accumulation of coal on the belt. In fact, 33 citations had been issued to this operator for improper

accumulations of coal on the belt, three during this particular inspection. He explained that the accumulations provided combustible material near a heat source caused by friction from the belt rubbing against the metal frame of the conveyor. The damaged rollers and the damaged structural components and some misalignment also caused frictional heat sources. This created a significant potential for smoke and fire in an underground mine environment. Tr 27-28. Conveyor belts, according to Lampley, are one of the more likely sources of an underground fire. Tr 30.

The Commission has also considered the hazards posed by accumulations on improperly maintained conveyor belts. An ALJ's finding that a belt running on packed coal created a potential source of ignition of loose coal and float dust, which was reasonably likely to result in an injury, was upheld by the Commission. *Amax Coal Co.*, 19 FMSHRC 846 (May 1997). In a case very similar to the present case, the Commission held that friction between the belt rollers and the accumulations or between the belt and the frame of the conveyor in the presence of accumulations could cause the accumulations to ignite. The hazard was properly designated as S&S. It was immaterial, the Commission stated, that there was no identifiable hot spot in the accumulations because continued use of the equipment in the normal course of mining operations must be taken into account. *Mid-Continental Resources, Inc.*, 16 FMSHRC 1218 (June 1994).

Inspector Lampley further testified that if a belt fire were to occur, it would be reasonably likely that a miner would be injured as a result. Because the conveyor belt is also a travel road for the miners, it is used several times per day. Additionally, the miner examiner is required to examine the belt each shift exposing him to injury, as well as any miners assigned to a cleanup crew. Tr 29. Generally, there are likely to be at least two miners in this area at any one time but there could be as many as eight if they are traveling by mantrip. Tr 31. The nature of the injury likely to occur, in Lampley's opinion, is exposure to fire and smoke inhalation resulting in lost workdays and restricted duty. Tr 30.

The Respondent suggested that if they had CO₂ sensors along the belt line this would have reduced the likelihood of injury to unlikely, however, Inspector Lampley stated that he did not recall there being CO₂ sensors present. Regardless, such sensors would only protect workers who were inby, not those who were outby. Tr 46. Crown did not introduce any evidence of CO₂ sensors being present. Inspector Lampley did say that he considered the fact that there was no methane or carbon monoxide present and that the area was rock dusted but he also considered the fact that there was float coal dust and accumulations present on and around the belt. The amount of coal dust that had rubbed off the belt indicated that the condition had existed for at least one shift already. Tr 36-39, 43. Crown suggested that fire resistant belt material would also reduce the likelihood of a fire, however, again, they provided no evidence (Crown called no witnesses) that the belt was made of such material. They represented that they would provide this evidence post-hearing which was never done. Tr 39.

Even if Crown had provided evidence of CO₂ detectors, fire resistant belt material or other protective equipment, it would not reduce the likelihood of a serious injury occurring, thereby changing the designation to non-S&S. In the case of *Buck Creek Coal*, 52 F.3rd 133, 136 (7th Cir. 1995), the operator presented evidence that the mine was equipped with CO detectors, fire retardant belts, firefighting equipment and personnel, and a rescue team. The Court upheld the ALJ's decision that the seriousness of a fire hazard was not lessened by the presence of safety measures

with which to fight a fire but, rather, the precautions put in place underscore the “significant dangers associated with coal mine fires.”

I find that Inspector Lampley provided highly reliable information regarding the gravity and nature of the safety hazard posed by the improperly maintained conveyor belt, giving due consideration to all of the surrounding circumstances that existed at Crown III at the time. I, therefore, find that the preponderance of the evidence establishes that it was reasonably likely that the missing rollers, misaligned belt and top rollers produced sources of friction in the presence of accumulations that possessed a reasonable likelihood of causing injuries that would be serious or fatal. The Secretary has established the four elements under *Mathies*; the violation is properly designated as S&S.

2. Citation No. 6675540 (Gov. Ex. 3)

On February 5, 2009, Chad Lampley issued this citation at Crown III during a regular inspection for violation of 30 C.F.R. §75.333(h). The citation reads as follows:

The permanent stopping line separating entries # 6 and #7 of the 1st North Submain, was not being maintained for the purpose which it was built. The stopping line separates the belt entry and travelway (Secondary Escapeway) from the intake entries (Primary Escapeway) for Unit III (MMU-002 & MMU-012) working section. Holes or leaks in the stopping line were present at the follow (sic) locations; 1) Crosscut #79 leaks along the top and bottom, 2) Crosscut #77 a 13 inch by 4 inch hole, 3) Crosscut #76 leaks along the bottom, no sealant along the bottom, 4) #75 leaks around the bottom, no sealant along the bottom, 5) #74 leaks through a hole in the upper north corner, and not sealed along the bottom. All areas were tested with chemical smoke and air was moving from the belt entry into the primary escapeway.

The inspector found that a permanently disabling injury was reasonably likely to occur, that the violation was the result of moderate negligence, that 20 persons would be affected and that the violation was significant and substantial. The Secretary proposed a penalty of \$3,689.00 be imposed.

a. The Violation

This ventilation control standard, in relevant part, requires “all ventilation controls, including seals, shall be maintained to serve the purpose for which they were built.” Inspector Lampley testified that on the day of this inspection, he found the air courses between the intake and conveyor belt and secondary escapeway were not being maintained properly. The belt line poses an inherent fire hazard and needs to be separated from escapeways. This separation of airways is accomplished by placement of permanent stopping curtains in the appropriate places. The curtains between crosscuts 6 and 7, however, were not being properly maintained to adequately separate the air from the belt line and the travelway or the escapeway. The damaged curtains were found at several places outby the working section and were noted with the defects as set forth in the citation above. Tr 51-54.

Crown does not contest that the regulation was violated nor did they object to the level of negligence. I find that the violation existed as cited by Inspector Lampley. Crown argues that the likelihood of an injury should be modified to unlikely and the nature of the injury should be lost work days rather than permanently disabling. Tr 66. This would necessitate a finding that the violation is not S&S.

b. Significant and Substantial¹

Lampley testified that should a fire occur in the belt line, the damaged stoppings, coupled with the improper air pressure cited in the following citation, would cause smoke to move from the belt line into the intake entry which is the primary escapeway, as well as into the travelway which doubles as the secondary escapeway. The improper air pressure at the site was forcing the air from the belt line toward the travel and entryways. The numerous large holes and gaps in the stoppings did not prevent the air from flowing into these areas as they are designed to do. He observed float coal dust on the intake side that had entered through the stoppings. This indicated to him, together with other factors, that this condition had existed for several days. As he previously testified, the belt line is an inherently likely location for a fire caused by the friction on the belt igniting the coal accumulations. If this were to occur under the conditions as they existed, the smoke would flow into the escapeways and the miners working inby of the area would be exposed to smoke inhalation injuries which could in turn prevent their escape. Tr 55-59. The entire working crew would be affected by this hazard which would be 20 miners. Tr 58.

Crown confirms that it had been several days since the last belt was moved which confirms that the condition existed for several days. Tr 65. They assert, however, that since Inspector Lampley did not take air readings inby on the intake that he could not tell the exact volume of air seeping into the entryway. Lampley did use chemical smoke to test the air exchange and could see it coursing through the stoppings. Tr 64.

Inspector Lampley has a master's degree in applied science. He has experience as a miner as well as three years as an MSHA inspector. I accept his expert opinion that there was a sufficient volume of air passing through the numerous sizeable holes and gaps in the stoppings into the entry and escapeways to reasonably expose the miners to smoke inhalation injuries.

Thus, I find the *Mathies* formula has been satisfied. There has been an undisputed violation of a mandatory standard. Secondly, there is a measure of danger to safety contributed to by the violation – the danger of smoke infiltrating the intake entries and escapeways in the event of a belt fire. Third, the seepage of smoke from the belt line airway would cause smoke inhalation injuries, and finally, that such injuries would be serious and quite possibly fatal.

3. Citation No. 6675541 (Gov. Ex. 4)

On February 5, 2009, Inspector Lampley issued this citation for a violation of 30 C.F.R. §75.350(a). The citation states:

¹ The applicable legal analysis of S&S is set forth in section A.1.b. of this decision and applies to all subsequent violations addressed herein.

Air from the belt entry was being used to provide air to the working section Unit III (MMU-002 & MMU-012). When tested with chemical smoke air was traced from the belt entry to the working section. Air was traveling through leaks in the permanent stopping line separating the (#6) belt entry from the intake entry (#7) (reference citation #6675540). The operator immediately halted mining and removed the belt from service.

The violation was assessed as posing a reasonable likelihood of causing a permanently disabling injury to 20 miners and was deemed significant and substantial. A moderate degree of negligence was involved. The penalty was proposed at \$3689.00.

Crown acknowledged the violation but requested the nature of the injury be modified to lost workdays. Tr 87. They did not offer any evidence to support their assertion or to contest the degree of negligence assessed.

a. The violation

30 C.F.R. §75.350(a) states that “the belt air course must not be used as a return air course; and except as provided in paragraph (b) of this section, the belt air course must not be used to provide air to working sections or to areas where mechanized mining equipment is being installed or removed.”²

The air in the mine is designed to travel down the primary escapeway which is also the intake aircourse to ventilate the working section. The air should then return via the secondary escapeway/return aircourse, which shares air with the belt line, and exit the mine. This air flow is controlled, in part, by maintaining lower pressure in the return course in order to push the fresh air down the intake course and draw it out through the return. What Inspector Lampley found was that the air pressure in the intake was reversed; it was lower than the return. The return air then from the belt line was being sucked from the return into the entry/primary escapeway, partly due the holes and leaks in the permanent stoppings between the two air courses, and was traveling to the working section. Tr 68-69. Although the improperly maintained stoppings contributed to the hazard caused by the violation, the reverse air pressure was, in and of itself, a separate and distinguishable violation caused by the return vent not being opened to the correct degree. Tr 72-73. This violation existed for several shifts in Lampley’s estimation. Tr 73. The operator abated the violation by opening a vent at the end of the return to create lower pressure in the return aircourse. Tr 69.

b. Significant and Substantial

Inspector Lampley testified credibly that the belt line is an inherently likely source of a fire in a mine. At the time he issued the citation, the belt line was in operation and it was in a working section. Tr 71. There was also the potential for diesel equipment being transported through the travelway to catch fire. The very real potential for fires on the belt line has been recognized by the court and the Commission as well in *Buck Creek Coal, supra*. The threat of explosions are also a constant hazard in an underground mine. See *Wabash Mine Holding Co. v. Secretary of Labor*,

² Neither party has alleged that the exception in paragraph (b), permitting belt air to ventilate the working section if approved by the district manager in the ventilating plan, is applicable.

28 FMSHRC 155 at 168 (March 2006)(ALJ). Furthermore, this mine has a history of accumulations of coal along the belt way which was cited during this inspection as well. The Commission has held that it was not necessary to identify a particular hot spot in the accumulations of coal on a conveyor belt to properly designate a violation as S&S recognizing the inherent danger of ignition posed by accumulations. *Mid-Continent Resources, Inc.*, 16 FMSHRC 1218, 1222 (June 1994).

If a fire or explosion were to occur in the belt line or secondary escapeway outby of the working section, the lower pressure in the intake would cause the smoke and deadly gases to be drawn into the primary escapeway thereby resulting in a contaminated primary and secondary escapeway. Tr 71-72, 87-88. With both escapeways contaminated with smoke and carbon monoxide, the injuries would be reasonably likely to be serious in nature, if not fatal, and reasonably likely to occur.

The Respondent established through cross-examination of Inspector Lampley that the precise volume of air flowing from the return aircourse into the intake was not measured. Inspector Lampley also admitted that he did not know exactly how many parts per million of carbon monoxide or methane would be required to overcome a miner seeking escape from the mine in the event of a fire in the belt line. Tr 83-85. The difference in air pressure was, however, obvious in that he could feel the air flowing through the holes in the stopping. By using chemical dust, he was able to see the transfer of air from the return to the intake. Tr 74-75. Furthermore, as stated in the discussion above regarding the previous citation, he also observed float coal dust on the intake side that had filtered through the holes and gaps in the stoppings. The holes and gaps were large as well as numerous. Based upon this information, I find that Inspector Lampley's expert opinion that there was a sufficient leakage of air from the return aircourse to pose a discrete and heightened safety hazard contributed to by the violation is well founded based upon all surrounding circumstances. I accept his assessment and find the violation is properly designated as significant and substantial.

4. Citation No. 6675847 (Gov. Ex. 8)

This citation was issued by Inspector Lampley on March 27, 2009, when he found Alpha 4035 diesel truck did not have a functioning parking brake in violation of section in 1909(d) of the Secretary's regulations. The citation 6675847 alleges that:

The company #4035 diesel maintenance truck was not provided with a functional parking brake. The #4035 truck was in service at the bottom shop. The operator removed the truck from service.

This citation was also designated as S&S with a reasonable likelihood to result in an injury causing lost workdays or restricted duty affecting one person. It was a result of moderate negligence. The proposed penalty is \$634.00.

Crown contends that the Secretary has not met her burden of proving that the mandatory standard was violated because the equipment was not tested on grade which is required by the regulation.

a. The Violation

When the truck operator set the parking brake, put the truck in gear and lightly pressed on the accelerator, the truck continued to move with little or no resistance when acceleration was stopped. This test was conducted on a flat surface. Tr 119. Inspector Lampley determined that this demonstrated to him that the truck was not being maintained in accordance with section 75.1909(d) which provides , in relevant part, that “self-propelled nonpermissible light-duty diesel powered equipment under §75.1908(b)...must be provided with a parking brake that holds the fully loaded equipment stationary on the maximum grade on which it is operated despite any contraction of the brake parts, exhaustion of any nonmechanical source of energy, or leakage.”

When questioned by the Respondent as to why he did not test the truck on the maximum grade in the mine where the truck would be used, Lampley testified that because the truck would not hold on a flat surface, there was no needed to test it further on grade. Furthermore, as a former assistant service manager for Ford, a certified auto mechanic and an outby mechanic miner, he knew from experience that if the brake did not hold on flat ground, it also would not hold on grade and testing the brakes in the manner in which it was done was appropriate. Tr 119-121. 142. He also did not want to endanger any miners driving a truck with faulty breaks to a location where there was a grade. The mine is very large and relatively flat. To find an area where there was a grade would have required driving the truck a considerable distance. Tr 131-134.

In a similar case before Judge Koutras, the inspector testified that he did not test the parking brake in accordance with the manufacturer’s specifications which provided that the test be done on level ground. The standard required the parking brake be tested on the maximum grade on which the vehicle traveled. Instead, the inspector tested it on a slight incline while the loader was rolling to see how long it took for the parking brake to stop its movement. He concluded that the inspector, with 16 years of experience with MSHA, rightly determined that if the empty loader failed to pass the most minimal test, the parking break would not hold on the maximum grade of travel. See *Secretary of Labor v. Highlands County Board of Commissioners*, 14 FMSHRC 270 (Feb. 1992)(ALJ). Judge Koutras cited several prior cases which affirmed inadequate parking brake citations challenged on the testing procedures. In *Thompson Coal & Construction, Inc.*, 8 FMSHRC 1748 (Nov. 1986), the inspector tested the brake by instructing the driver to put the vehicle in reverse on level ground. In a case heard by Judge Cook, the parking brakes were tested by the driver putting the vehicle in third and fourth gear, depressing the brake and accelerating. The truck started to creep which was sufficient proof that the brakes would not hold on any grade on which it would travel. The respondent could not establish that the test produced inaccurate results and the judge concluded that the test results established a *prima facie* violation. See *Medusa Cement Company*, 2 FMSHRC 810 (Apr. 1980).

I have considered the testimony presented, the inspector’s experience, not only with MSHA but also as a trained mechanic with a master’s degree in applied science, and the fact that the respondent has offered no evidence to rebut the inspector’s expert opinion. In conclusion, I agree with Inspector Lampley’s logical assessment that if the parking brake does not hold the truck stationary on a flat surface after acceleration has ceased, it will not hold under the more rigorous test of setting it on a grade. Inspector Lampley used good judgment in determining that driving the malfunctioning truck to another location only to confirm what was readily apparent, would unnecessarily put others at risk of harm. I find that the Secretary has proven by a preponderance of the evidence that the mandatory safety standard was violated. The citation is affirmed.

b. Significant and Substantial

The violation was deemed S&S because the vehicle was used routinely in all areas of the mine. When not in use, it was parked near the shop which is an area traveled by miners going to and from their work areas. There were always people in and around this vehicle. Tr 126. If this truck was parked on grade or not put in park, it could strike an individual or another piece of equipment with a miner on it. Continued use of the vehicle under normal mining operations posed a reasonable likelihood that such an accident would occur, in Inspector Lampley's estimation. Tr 125. Resulting injuries would result in, at a minimum, lost workdays or restricted duty. Tr 127. The vehicle was subject to weekly inspections as well as daily operation; therefore, the condition should have been detected and remedied. Tr 127-128. The respondent has offered nothing to contradict Inspector Lampley's testimony.

In *Secretary of Labor v. FMS Corporation*, 28 FMSHRC 50 (Jan. 31, 2006) (ALJ Manning) a Jeep's parking brake failed when the transmission slipped from park into reverse on level ground pinning the driver between the rear bumper and a wall. He suffered extensive internal injuries as a result. The violation was upheld as S&S by Judge Manning, in part, because a serious injury did occur which was directly related to the violation. While no injury occurred at the Crown III mine due to the inoperative parking brake, the *FMS Corporation case* is illustrative of the severity of injuries that are reasonably likely to occur in the context of normal mining operations even when operating the vehicle on level ground.

I conclude, having considered the credible testimony of Inspector Lampley and the surrounding facts and circumstances, that the Secretary has established the *Mathies* criteria by a preponderance of the evidence. The discrete safety hazard –being struck by an uncontrollable truck – has been created by the nonfunctioning parking brake. There exists a reasonable likelihood that being run over, struck or pinned by the truck would result in an injury and that the injury would be of a reasonably serious nature.

5. Citation No. 7493279 (Gov. Ex. 10)

This citation was issued by Inspector Larry Rinehart for inadequate parking brakes on a small mantrip under section 74.1909(d). Inspector Rinehart is a retired MSHA inspector with prior experience as an electrician in underground mines. He attended college studying power mechanics which included testing of brakes and other mechanical systems on vehicles. He was also trained in the military to conduct preoperational inspections on motorized equipment and finally, he worked in an Exxon service station performing motor vehicle safety inspections for the state of West Virginia. His training for this job was provided by the state of West Virginia and included training on brake testing procedures.

The violation issued on March 18, 2009, during a regular inspection, was designated as S&S with the reasonable likelihood of causing an injury resulting in lost workdays or restricted duty affecting one person resulting from moderate negligence on the part of Crown. The citation alleges that "the diesel vehicle, company number 3121 located in the bottom shop was not equipped with a park brake that would hold the machine stationary on a grade." The proposed penalty is \$499.00.

a. The Violation

Inspector Rinehart testified that he tested the mantrip's parking brake in the same manner as Inspector Lampley did the truck involved in the preceding violation discussed above. Tr 139-141. Like Lampley, Rinehart determined based upon his many years of experience in auto mechanics, that it was unnecessary to test the mantrip on grade when it did not hold on level ground.

Crown contests this violation for the same reason as they did Citation No. 6675847 discussed above. Based upon the same analysis, I find the Secretary has established a violation of the mandatory safety standard.

b. Significant and Substantial

Inspector Rinehart testified that the equipment in question is a five or six man light-duty vehicle. Tr 141. The lack of a functioning parking brake exposed miners to the hazard of being struck by it if it were to remain in operation under normal mining conditions. Tr 143. He inspected the wear on the brakes as well as the preoperational inspection reports and determined that the park brake and the service brake could fail at any time and the condition had existed for at least one shift. Tr 144.

The respondent's representative declined the opportunity to cross-examine the inspector stating "this is the same issue as the previous one... we think it should be vacated because it was not the proper test." Tr 145.

For the same reasons and based upon the same analysis set forth in section 4. b. above, I find the citation was properly designated as S&S.

6. Citation No. 7493286 (Gov. Ex. 12)

This citation was also issued by Inspector Rinehart under section 74.1909(d) on May 5, 2009 for vehicle number 3044. The citation alleges that this vehicle "located on unit two was not equipped with a park brake that would hold the machine stationary on a grade."

The citation is written as reasonably likely to cause an injury that would result in lost workdays or restricted duty, that it would affect one person and was the result of a moderate degree of negligence. It was designated as S&S and carries a proposed penalty of \$634.00.

a. The Violation

Inspector Rinehart initially testified that the vehicle was placed on a slight grade, the parking brake was set, and when placed in neutral, the vehicle began to roll down hill. Tr 147. He later said that additional testing was done on the vehicle by turning off the motor and placing it in each gear. Again, it rolled down hill without any resistance. Tr 151. At this point, Crown accepted the violation as written. Tr 152. Thus I find it unnecessary to discuss the S&S designation as it would be identical to the two preceding citations and has not been challenged.

7. Citation No. 6675287 (Gov. Ex. 20)

Dennis Baum is a certified MSHA inspector certified in March 2007. His prior experience is as a miner for Consolidation Coal for five years and with Crown III for 20 years. During a

regular inspection he conducted on April 15, 2009, the inspector issued a citation under section 75.370(a)(1) of the regulations. Specifically he cited the following alleged violation:

A violation of the operator's approved ventilation plan is present in the 2nd South/Main West panel, 001/011 MMU. When checked with a calibrated anemometer, there is only 17,685 CFM of air in the last open crosscut between entries #2 and #3. The approved ventilation plan requires a minimum of 20,000 CFM of air in the last open crosscut. Coal production was ceased until ventilation could be restored.

Baum designated the violation as S&S with a reasonable likelihood that an injury would occur resulting in a permanently disabling condition affecting five persons. The negligence was marked as low. The proposed penalty is \$745.00.

a. The Violation

The cited standard provides:

The operator shall develop and follow a ventilation plan approved by the district manager. The plan shall be designed to control methane and respirable dust and shall be suitable to the conditions and mining system at the mine. The ventilation plan shall consist of two parts, the plan content as prescribed in §75.371 and the ventilation map with information as prescribed in §75.372. Only that portion of the map which contains information required under §75.371 will be subject to approval by the district manager.

30 C.F.R. §75.370.

Inspector Baum was in possession of the approved ventilation plan for the Crown III mine when he performed his inspection. The plan requires 20,000 CFM of air at the last open crosscut. Tr 231-232 and Gov. Ex. 39. When he took his measurements, there was 17,685 CFM in that location.

Crown does not contest the violation per se but argues that this violation and the two discussed below should be modified to unlikely to occur and resulting in lost workdays or restricted duty. They admit that the air readings were accurate but that the lower levels permissible under the plan prior to Centre Crown ownership justify this reduction.³ Tr 249-259. This standard requires strict adherence to the approved ventilation plan which was clearly violated.

b. Significant and Substantial

Black lung disease is a permanently disabling medical condition caused by long term exposure to coal dust. At the time Inspector Baum took his readings, there was float coal dust visible in the air and miners were working downwind of it. Inspector Baum stated that this mine has

³ Respondent sought to introduce documents establishing that they objected to the changes in the ventilation plan approved by the district manager at the time they took over management of Crown III Mine. Crown requested that I hear and decide the issues regarding their objections in defense of these citations. I find these documents irrelevant to these proceedings and that this is not the proper venue to contest this issue.

a history of miner's claims of black lung disease and the inability to meet the respirable dust requirements. Tr 234-236. The inspector was not able to say, however, that any such violations have been cited since Crown took over operations of Crown III mine. Nor could he say that he was aware of any black lung disease claims since Crown has operated the mine. Because he saw the coal dust in the air while miners were working in the area, the inspector designated this particular violation S&S. Tr 236-237. The condition was believed by the inspector to have lasted only a short period of time. In fact, he recalled that mine personnel had taken air samples that shift and the volume met the ventilation plan requirements. Also, they were running the dust pumps which would provide the requisite amount of air to the area. He explained that in the past there was a problem but now they have someone go in and monitor the pumps and take air readings and ensure they are maintaining ventilation. Tr 237-238. In order to abate this citation, they tightened some curtains to keep the air in the crosscut. This increased the volume of air to 24,300 CFM. Gov. Ex. 20.

I find that should an injury occur as a result of this violation, it would likely be permanently disabling. However, I find Inspector Baum's testimony that the violation existed for a short period of time and that Crown personnel were actively taking timely steps to remediate the condition, not only at the time this citation was issued, but on a regular basis by checking the pumps and taking air readings, significant. I also find significant that fact that Centre Crown had fairly recently taken over operations of Crown III mine and the inspector could not say the history of similar violations had been committed by this operator. Furthermore, complicated pneumoconiosis is contracted only from exposure to coal dust over a very long period of time. Taking these facts together, I find that an injury was not reasonably likely to occur because there was no evidence presented that the hazard lasted for a prolonged period of time or was likely to, considering the operator's demonstrated actions in monitoring air volumes. The third criterion under *Mathies* has not been met; this violation is not significant and substantial.

8. Citation No. 6675290 (Gov. Ex. 22)

This citation was issued under the same standard as the previous citation. It was issued on April 21, 2009, by Inspector Baum. The citation reads as follows:

A violation of the operator's approved ventilation plan is present in the 3rd West panel off the 1st North Sub-Mains. When checked with a calibrated anemometer, there is only 15,113 CFM of air in the last open crosscut between entries 2 and 3. The approved ventilation plan requires that 20,000 CFM of air be in the last open crosscut. Mining was ceased until corrections were made.

Inspector Baum cited the gravity as unlikely to result in permanently disabling injuries to two miners as a result of a moderate degree of negligence by the operator. This citation, unlike the previous one or the following one, was not designated as significant and substantial. Inspector Baum's reasoning was that he did not see any float coal dust in the air when he issued the citation. Otherwise, this violation was alike in all other respects from the other two. Tr 240-241. The proposed penalty is \$207.00. The operator abated the violation by tightening the curtains and the air volume increased to 23,562 CFM. Gov. Ex. 22.

As noted in the above discussion, I find the operator's objection to the change in the approved ventilation plan does not provide Crown with a valid defense to this violation. This

standard imposes strict liability for a violation. The air readings were not challenged and the Secretary has met her burden of proving the violation therewith.

9. Citation No. 6675297 (Gov. Ex. 24)

This citation was issued on April 24, 2009, under the same standard as two citations discussed above. This one, like citation no. 6675287, was designated as S&S because there was coal dust visible in the air. Tr 244-245. The gravity is cited as reasonably likely to result in permanently disabling injuries due to the potential for coal dust to cause black lung disease and was the result of moderate negligence on the part of the operator. The citation states that the 2nd South/Main West, 001/010 MMU when checked with an anemometer had 17, 677 CFM of air. The curtains were tightened and air was restored to 21,645 CFM within approximately 30 minutes. Gov.Ex. 24. The proposed penalty is \$1,203.00.

a. The Violation

For the same reasons stated above, I find the Secretary has met her burden of proving that the violation did occur.

b. Significant and Substantial

Inspector Baum testified that he designated this violation as significant and substantial for the same reasons as he did citation number 6675287 discussed above. He stated that based upon the mine's history and the fact that this was the third such violation issued during this inspection, he felt the operator was just not paying sufficient attention to this issue. Tr 246. He was aware of miners who claimed black lung disease injuries and prior problems with maintaining proper air volume before he left the Crown III mine. However, again, Baum testified that he has been with MSHA since March 2007 and Centre Crown took over operations in June 2008, well after Baum's employment at Crown III ended. I find, therefore, that the mine's history as Baum knew it is not a deciding factor in the S&S analysis of these citations. Furthermore, with respect to the earlier discussed citation, he testified that Crown was addressing the issues and checking air readings and running the pumps, indicating an improvement in the amount of attention being paid to the situation. I also do not find that fact that there was coal dust in the air at the moment the inspector took his anemometer readings is a sufficient factor to distinguish a significant and substantial violation from a non-significant and substantial violation. The coal dust could have been present for only minutes and depended upon several factors including what type of work was being conducted at the moment. There was no evidence presented on this point. Moreover, complicated pneumoconiosis, the disabling form of black lung disease, is the result of very long term exposure to coal dust. Therefore, all three of these citations should logically be designated the same way and for the reasons set for the above in section 7. b., I find that they should not be designated as significant and substantial.

10. Citation No. 6675836 (Gov. Ex. 6)

This citation was issued on March 17, 2009 by Inspector Lampley during a regular inspection. The violation is issued under 30 C.F.R. §75.220(a), for failure to adhere to the approved roof control plan. It alleges:

The company's approved roof control plan was not being followed on Unit 1 (MMU-011), 2nd South panel, entry #9 S.S. 1838. From 10 ft. outby the last open crosscut up to the face (approximately 60 ft.) ten roof bolts were damaged or loose.

The citation was amended to a violation of section 75.202(a), however, the wording of the narrative section of the citation was not changed.⁴ The violation was assessed as reasonably likely to cause an injury resulting in lost workdays or restricted duty affecting two persons. It was the result of a high degree of negligence and was designated as significant and substantial. The proposed penalty is \$3405.00.

a. The Violation

Section 75.202(a) states the following: "the roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts."

The inspector testified that he found ten roof bolts ten feet outby of the last open crosscut were damaged or loose. Four had no contact with the bearing plate and were hanging loose from the roof. Two had no damage from being struck by equipment but were loose indicating that either some portion of the roof had fallen or they were improperly installed. None of the bolts was offering support to the roof. The entire area of unsupported roof measured 70' x 75'. This was located in a working section and exposed the miner operator, his helper, the scoop man and any haulage car drivers to the dangers of working in this unsupported area. Tr 91-94.

Crown III does not argue that the violation did not occur but that the negligence should be changed from "high" to "moderate" and the gravity of the violation to "unlikely" alleging that the area had just been cut and the violation was issued just after an idle shift. The respondent further stated that they had requested a conference with the district manager to discuss the high degree of negligence cited but before the request could be approved, the assessment of the penalty was proposed. Tr 115. I find this irrelevant to my independent assessment of the degree of negligence involved as discussed below. I conclude that a section 75.202(a) violation under the amended citation occurred as Inspector Lampley testified, rather than as the first sentence of the narrative section of the citation states.

b. Significant and Substantial

The designation of this citation as S&S was based upon Inspector Lampley's observations of the cited condition as well as his knowledge of this mine's history of roof falls as well as industry

⁴ The standard under which the violation was written prior to amendment, Section 75.220(a), provides "each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered." The operator did not raise the issue of lack of notice due to the incorrect language being used in the narrative portion of the citation and I find there has been no prejudice to the operator. The amendment was made the day after the citation was issued providing ample time for the operator to defend against it.

records of injuries caused by falls. Lampley testified that this 70' x 75' area of roof was not being supported by the damaged or loose roof bolts. As a result, a large area of roof may fall out injuring the miner operator, his helper, the scoop operator and any haulage vehicle operators. This section of the mine had coal and shale sloughing away from the limestone. The permanent roof bolts are designed to support the roof in between each bolt but with missing or loose bolts, a larger area of roof could fall and would be more likely to do so. Where there are multiple permanent support bolts missing or not supporting the roof in an area where miners travel multiple times each day without any warning flags to prevent exposure, there is an increased likelihood of a miner being struck by falling rock. Tr 92- 98. An injury caused by a rock fall is reasonably likely to be serious. Tr 98.

The Crown III mine, according to Inspector Lampley, had one of the highest incidents of roof falls with injuries in the district at the time of this violation. Within an 18 to 24 month period, they had approximately 65 falls. Additionally, there were incidents of miners being struck by sloughing rock with resulting lacerations. Lampley was aware of this history from reviewing the mine's profile before starting his inspections. Tr. 99 and Gov. Ex. 34. Although not all of the falls may have been due to unsupported roof, the likelihood is increased with the presence of damaged or loose bolts, in Lampley's opinion. Tr 101.

Inspector Lampley also referred to a January 2, 2002 fatalgram during his testimony as evidence of the likelihood of an accident and the gravity of a roof fall under these circumstances. Gov. Ex. 38. The cause of the fatal roof fall reported therein was due to the presence of seven damaged roof bolts in an entryway at the second crosscut, a situation very similar to this one. Tr 103-104.

The number of persons affected by the violation was determined to be two persons at any one time. Although there were multiple persons likely to be in this working section of the mine, it would be likely that a miner and his helper, or a bolter and his helper would be in the area at the same time in close proximity to each other and would both be struck by a roof fall. Tr 104. It would be expected that at this particular location in the mine, if a portion of the roof fell, it would likely be a relatively small amount of material causing injuries serious enough to result in lost workdays or restricted duty. Tr 102.

Based upon the expertise of the inspector, and in the absence of evidence to the contrary, I find the preponderance of the evidence establishes that it was reasonably likely that the damaged and loose permanent roof bolts contributed to the hazard of a roof fall in a working area of the mine which would be reasonably likely to result in injuries that would be reasonably serious. The Secretary has satisfied the four *Mathies* criteria and established the S&S violation.

c. The Negligence

The respondent requested that the negligence be reduced from "high" to "moderate" asserting that the area in question had been recently cut therefore the condition had existed for only a short period of time thus posing a lower exposure of danger to the miners. In support of this theory, Inspector Lampley was asked if it was possible that the damaged bolts were a result of being struck by a piece of equipment being used on the previous shift. Tr 110. Inspector Lampley responded by saying that if a piece of metal such as the bolt had been recently struck, he would be able to determine that by a visual inspection. Freshly struck metal rusts relatively quickly enabling one to assess how

long the condition had existed. There was no indication from what he saw that the condition had just occurred. Tr 116. Furthermore, Inspector Lampley indicated on his sketch of the area made at the time he cited the violation, that he put the notation "no contact" on several of the bolts. That meant that the loose bolts were not damaged or bent from being struck by a piece of equipment. Tr 109 and Gov. Ex. 7. If they had been, there would be a shiny metal stripling in the otherwise brown metal. Tr 106. They were either loose due to sloughing rock or improper installation. Tr 93. It was also evident that the face had remained unchanged for a period of time from the date, time and initials (DTI) that were inscribed on the roof support plates. There were DTIs from at least three shifts on the plates when Lampley inspected them. Tr 106.

The reason the inspector charged the operator with high negligence for this violation is because the number of DTIs on the plates proves that an examiner had been there on five different occasions, during at least three shifts, and knew or should have known the hazardous condition existed and took no corrective action. Tr 107. Nothing was done to flag off the area and nothing was noted in the pre-shift or on-shift examination book indicating the hazard. Tr 107. Nothing was offered by the operator in mitigation; however, the condition was abated in a timely manner. Tr 108.

I conclude that the Secretary has established that a high degree of negligence was involved in allowing this condition to exist. This mine is known for having an extremely high incident rate of roof falls with injuries, one of the worst in the district. The pre-shift and on-shift examiners are tasked with the duty to ensure the roof is properly supported in working sections for the protection of the miners. They should be on heightened alert of such hazards during their inspections being aware of the history of this mine and of the fatality rate from roof falls in general. It is unconscionable that five inspections were made of these roof supports and DTI'd over the course of three shifts and not one of the examiners noted the hazard, flagged out the area or took steps to install proper support pins. Moreover, they offered nothing to mitigate the severity of the violation except to ask the inspector how he could be sure all ten bolts in this 70' x 75" area hadn't just been damaged by a piece of equipment used on the preceding shift. Their lack of concern for the safety of the miners is apparent.

11. Citation No. 6675278 (Gov. Ex. 16)

The regular inspection of April 2, 2009 resulted in the issuance of this citation for another violation of section 75.202(a). This citation alleges:

The roof in the number 6 entry in the 3rd West/1 North Sub-Main panel, 012 MMU, is not being supported or otherwise controlled to protect persons from the hazards of a fall of roof. One roof bolt was knocked out and the rib was worn off by the ram cars, creating an area of unsupported roof measuring approximately nine feet by nine feet.

This area is used by the ram cars hauling coal and is one crosscut inby the turn to the feeder. The area was dangered out to prevent travel.

Inspector Baum found that an injury resulting in lost workdays or restricted duty was reasonably likely to result, that one person would be affected, that the violation was significant and substantial and that it was due to a moderate degree of negligence on the part of the operator. The penalty proposed is \$1203.00.

a. The Violation

While traveling in the belt entrance in the number 6 entry, Inspector Baum saw a corner where a bolt had been knocked out and the corner of the wall, or rib, had been rubbed off. It was obvious that as the ram cars turned the corner coming out of that entry, either their canopy or side board had knocked the bolt and nut off the bearing plate and broke the bolt off. The plate was gone as well. Tr 203. Because the turn was a tight one and the cars could not get around it easily, the side of the equipment was rubbing the corners and in this one particular place, the wall was worn away all the way up to the roof. Tr 203-204. The inspector's main concern with this situation was the unsupported roof resulting from the missing bolt as there were miners working and traveling in this section of the mine. Tr 204.

The mandatory standard states "the roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts." In the inspector's opinion the missing bolt posed such a threat of a roof fall to the miners working and traveling in this area. He based his opinion, in large part on his 20 years of experience as a miner at Crown III. He stated that he recalled the Crown III mine had poor roof conditions and an extensive history of roof and rib accidents, the majority of which resulted in injuries. Tr 205. During his years at Crown, he saw many roof falls and explained that the roof can fall in between the bolts when the roof is fully bolted. When a section is unbolted, the likelihood of a fall increases. Tr 206. As a miner's representative, Inspector Baum investigated a roof fall at Crown III which resulted in an injury serious enough to warrant an immediate report to MSHA. In that instance, the roof had fallen in between the bolts. Tr. 206 – 207.

Crown raised only an objection to the S&S designation and the likelihood of an injury. Based upon this and Inspector Baum's unique expertise on roof falls in this mine, I give full credit to his testimony and find the violation occurred as cited.

b. Significant and Substantial

Inspector Baum designated the violation as S&S, again, in large part based upon his unique familiarity with the Crown III mine's history of roof falls and related injuries. In his experience, the mine has had bad roof conditions for decades throughout the mine. Many injuries have resulted from the falls under the best of conditions. With an area of unsupported roof, if the condition were allowed to continue under normal mining conditions, in his opinion, there would be a roof fall and an injury. Tr 205-206. Because this area is in by the loading point, there are workers present, usually one at any given time who would be exposed to the danger of a fall. Tr 207. The loading point is examined on every shift during the pre-shift and on-shift examinations and the condition should have been identified as a hazard as it was an obvious condition. Tr 208. Based upon how the rib was worn, the inspector estimated that the condition had existed for at least one shift. Tr 207. Inspector Baum recalled 58 roof falls and 18 other roof and rib accidents at Crown III, many of which resulted in injuries and lost workdays. Tr 213. Inspector Baum went through each and every one of these incidents to determine how many occurred while Centre Crown was operating the mine. There were 13 falls, two of which resulted in injuries to miners. Tr 214-221. He felt this was a very high number in the space of one year. Tr 221. A review of Gov. Ex. 34, the mine history, there were actually 18 roof falls in that eleven month period with two resulting in injuries.

Regardless of whether there were 13, 18 or two roof falls, it is not necessary that an injury actually occur to find a violation is properly designated as S&S. It is also not required that the Secretary show that it is more probable than not that an injury will result from the violation, *U.S. Steel Mining Co.*, 18 FMSHRC 862, 865 (June 1996) and the inspector's opinion that a violation is S&S is entitled to substantial weight. *Harlan Cumberland Coal Co.*, 20 FMSHRC 1275, 1278-79 (De. 1998); *Buck Creek Coal, Inc. v. MSHA*, 52 F3d 133, 135-36 (7th Cir. 1995).

The respondent tried to establish through Baum that by the old rule of thumb, one could advance in by the last row of permanent support a certain distance – this distance being arm's length. Tr 210. The respondent then asked if this would be a distance of four feet. Baum responded by saying "if you've got an arm's length of four feet, I'd say you're a heck of a man." The distance would be closer to two feet. Tr 211. Because this broken bolt was located in a corner, there was a distance of nine feet to the next bolt in a triangular pattern. Most accidents, Baum confirmed, occur in an intersection but he has seen them in entries as well. Tr 211-212. This exchange, I infer, was intended to establish that the one broken corner bolt would pose little more of a hazard than that which exists of a roof fall between bolts or in setting the next row of bolts in unsupported roof. This logic ignores Inspector Baum's testimony that the roof in this mine is notoriously bad and even when bolts are in place, falls occur. Therefore, it is that much more of a risk when even one single bolt is not properly installed, or is damaged, broken or otherwise not doing its job. Additionally, the next bolt was nine feet away, not two.

I find no merit in the respondent's assertions that an injury was unlikely taking into account Crown III's history of having an excessive number of roof falls due to poor roof conditions throughout the mine as Inspector Baum so clearly described. Instead, I find the S&S designation is supported by the expert testimony of Baum. One damaged roof bolt under the conditions of this mine could be reasonably likely to result in an injury due to falling rock. The many past injuries from such an accident have already proven to be reasonably serious on too many occasions to doubt that an injury from this particular violation would be reasonably serious as well. The Secretary has met her burden of proof.

12. Citation No. 6675733 (Gov. Ex. 14)

George Hoytheacock has been an inspector for MSHA since May 2007. Prior to that he worked in underground coal mines for over 31 years, seven of which he worked as a roof bolter. Tr 153-155. During a regular inspection conducted on April 3, 2009, he issued this citation to Crown under section 75.202(a). It reads as follows:

The roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs. Loose and unsupported roof was observed in Unit #4 (MMU-014) working section. A roof bolt located between room #27 and room #28 has been damaged and the exposed area measured approximately 8 feet by 7 feet.

The inspector assessed the likelihood of an injury as reasonably likely resulting in lost workdays or restricted duty affecting two miners and designated the violation as significant and substantial. The proposed penalty is \$1304.00.

a. The Violation

This standard is as stated above in sections 10 and 11. When Inspector Hoytheacock was making an imminent danger run across the face in this section of the mine, he observed a damaged bolt that appeared to have been struck by something. Tr 157. In his experience he knows that when a bolt is struck, it can become loose. The bearing plate was no longer in contact with the roof thereby offering no roof support. The area of unsupported roof measured 8' x 7' which is a significantly large area. Tr 158. In addition to the obvious condition of the bolt, it was also evident that there were gaps and slits in the roof. The inspector made a sounding to determine the exact condition of the roof where the gaps and slits were located. When tapped with a brass knobbed stick, a "drummy" noise was made indicating the rock was no longer solid and could fall. Tr 159. This was in a working section of the mine exposing miners to the hazard of a roof fall. Tr 160.

Crown does not contest the violation but requested that the gravity be reduced to unlikely that an injury would occur because this area was not in an intersection and the negligence be reduced to low because there had not been a roof fall in this location before. Tr 176.

I accept the inspector's assessment of the conditions in this area of the mine and his determination that the standard was violated. In addition to having been an inspector for MSHA for a significant period of time, he also was familiar with the roof falls in Crown III and had seven years of experience as a roof bolter to draw upon in making this assessment. I find the violation supported by the evidence.

b. Significant and Substantial

This violation was designated as significant and substantial because, as Inspector Hoytheacock stated, approximately 56 square feet of the roof was unsupported in an area where it was no longer solid. Taking into consideration the fact that this mine had had 10 lost time accidents due to roof falls in a 10 to 18 month period, this condition created a reasonable likelihood that a fall would occur. Tr 161-162. Based upon the size of the unsupported area, it was reasonably likely that a rock of sufficient size would strike a miner and cause a reasonably serious injury resulting in lost workdays at a minimum if mining operations were to continue. Tr 162. It would be likely that two persons would be injured as there would be a continuous miner operator and his helper in close proximity to one another working in this last open crosscut. Due to noise constraints and the need to communicate with each other, they would be close enough together to be struck at the same time. Tr 162-163.

It is not required that the Secretary show that it is more probable than not that an injury will result from the violation, U.S. *Steel Mining Co.* I therefore find the respondent's argument unpersuasive that an injury would be unlikely because a roof fall has never occurred, at least as he alleges, in this location before. "As long as a miner could be at risk during the course of normal mining operations, there need not be actual exposure of miners proven" to find a violation is properly designated as S&S. *Consolidation Coal Co.*, 19 FMSHRC 1897 (Dec. 23, 1997) (ALJ Bulluck). Again, relying on *Harlan Cumberland Coal Co.*, and *Buck Creek Coal, Inc. v. MSHA*, the inspector's opinion that a violation is S&S is entitled to substantial weight. Inspector Hoytheacock articulated sufficient facts upon which to base his expert opinion and I find that this violation is significant and substantial.

c. Negligence

Crown also contends that the negligence level should be low rather than moderate because a roof fall has never occurred in this section of the mine before and would not likely to do so from only one defective bolt. He attempted to establish that under any roof plan, the roof is supported from one bolt to the next. On Crown's four foot square plan, therefore, the roof would be supported four feet in each direction from the last installed bolt. What would follow using this logic is that when one bolt in the square pattern is defective, the bolt to its north, south, east and west would hold the roof. The respondent asked the inspector how far in by the last row of bolts the roof is supported. Tr 167-169. Inspector Hoytheacock responded that it would be an imminent danger to proceed past the last row of bolts. Tr 169. He added that taking into account the cracks in the roof in this area, the roof would fall out from pin to pin. Each roof bolt contributes to the support of the roof. Tr 172. Put another way, if one bolt is out in a row of bolts, it decreases the overall strength of the roof. And although a fall had not occurred in this section before, a roof fall can occur anywhere in a mine in the inspector's opinion. Tr 177.

The respondent argued also with regard to this citation as well as the last one, that falls more often occur in the intersections and not when the damaged bolt is in a pillar as in this case. Tr 176. He asked the inspector if this was correct in an attempt to prove the point. The inspector's response was that being in a pillar, a fall would be less likely to be "massive" but a lesser fall would reasonably result in serious injuries as well. Tr 175.

Inspector Hoytheacock determined that the condition existed for one shift by the presence of dry rock dust being present which is done on the outer shift. The inspection was done during the subsequent day shift so the rock dust had to have been laid during the preceding shift. This being the case, the area should have been inspected twice before the inspection took place –once on a pre-shift examination three hours before the day shift began and again on the on-shift examination. Management, therefore, knew or should have known that the condition existed. Tr 163-164. Hoytheacock did consider the presence of rock dust a mitigating factor in reducing the negligence from high to moderate. He explained that had there not been rock dust, the area would have been black making the damaged bolt easier to see. Tr 164. He found no additional mitigating circumstances and management offered none at the time. Tr 165.

Negligence is the failure to meet the standard of care required by the circumstances. Moderate negligence is defined by the regulations as when an operator knows or should know that a violative condition exists but there are some mitigating circumstances. 30 C.F.R. §100.3(d), Table X. Inspector Hoytheacock offered credible testimony as to the circumstances surrounding this violation. They are that: 1) Crown III has an extensive history of roof falls many of which resulted in relatively serious injuries; 2) The mine is known to have poor roof conditions making proper roof support extraordinarily important; 3) The failure of even one bolt in a four by four square configuration weakens the overall support of the roof; 4) Coupled with cracks and gaps in the roof, a damaged bolt will reasonably likely result in a roof fall under normal mining conditions; 5) Roof falls can occur in any part of a mine, not only in intersections; 6) The unsupported roof condition between room #27 and #28 existed for at least one shift and should have been examined twice prior to the issuance of this citation; and, 7) Management knew or should have known of the condition and did nothing to correct the situation. This was the third of six citations issued between March 17,

2009 and May 7, 2009 for similar unsupported roof or rib conditions. It appears that Crown bears little sense of responsibility for the safety of their miners. It is only upon Inspector Hoytheacock's testimony that he felt the presence of rock dust mitigated the violation that I find moderate rather than high negligence is appropriate.

13. Citation No. 6675454 (Gov. Ex. 29)

This citation also alleges a violation of section 75.202(a). It was issued on May 7, 2009 by Inspector Jeffrey Adams. Adams has been an MSHA inspector for three years and was a miner for 26 years prior to that. His experience in underground mining includes working as a roof bolter. The citation he issued alleges:

A loose rib in Unit 3, entry no. 4, at survey station 700 was not supported or otherwise controlled to protect persons from hazards related to falls of roof, face, or ribs and coal or rock bursts. The rib measured approximately 10 feet in length by 8 feet in height and was directly adjacent to the high voltage sled behind the section power center.

The violation was assessed as reasonably likely to result in a permanently disabling injury, significant and substantial affecting one person and a result of moderate negligence. The proposed penalty is \$1795.00.

a. The Violation⁵

On the day in question, Adams was performing respirable dust sampling when he walked through what is known as the "dinner hole" which is a place where miners congregate before they go to the working face. It is also a place where parts are stored in the shop area. As he exited the dinner hole going towards the face, he saw a loose rib near the section power station. Tr 184-185. He determined that the rib was loose by its appearance. Both ends of this ten foot by eight foot section of the coal wall had a gap approximately six inches wide at each end. There was also a crack across the top from end to end. Tr 185. The condition was very obvious and located in one of the two entryways leading to the face. It is traveled by 20 to 22 people on that unit at least once per shift. Tr 186. Adjacent to this area is the high voltage sled similar to a table on which excess high voltage cable is coiled. The sled is rather large and takes up the majority of the entryway leaving only six feet or so between it and the rib for miners to pass by. Tr 187. Three timbers were required to support the rib in abatement of the citation. Gov. Ex. 29.

Crown contests the gravity of the citation asserting that it should be marked as unlikely to cause an injury but does not contest the violation.

I find, based upon Inspector Adams' testimony, the violation is established as cited.

b. Significant and Substantial

Inspector Adams described the rib as weighing approximately three tons. It was larger than the travel way and would have covered the entire walkway had it fallen. Tr 188. The large gaps at both ends and the crack across the top indicated to him that it was loose and posed a real danger of

⁵ The same standard was cited in this violation as in the preceding three violations.

falling. Tr 184. The likely outcome of such a fall would be a crush injury that would be at least permanently disabling and very likely fatal. Tr 188-189. In support of his opinion, he referred to two fatalgrams, Gov. Ex. 42 and 43. Both fatal incidents were the result of falls of unsupported loose ribs in underground mines similar to the condition found at Crown. The most recent one was dated January 22, 2010. Tr 189-192. The location of this condition in one of the two travelways to the face made the condition especially perilous. Every miner on the unit numbering 20 to 22 was exposed to it. Generally, only one person at a time would be walking through there which is why Adams assessed the exposure as to one person. Tr 193

It does not take any imagination to find that this condition, had it not been cited and abated, posed a discrete safety hazard of a rib fall that in all reasonable likelihood would result in an injury and that injury would be of a reasonably serious nature. Taking into consideration the weight of the rib and the relative size as compared to the width of the travelway, I find that an injury resulting from a fall would likely be fatal rather than permanently disabling. I so modify the gravity of the citation.

c. Negligence

Inspector Adams testified that there were no mitigating facts offered by management at the time of the inspection. Tr 195. It appeared that the condition had existed for more than one shift as he explained that usually a pillar cracks first and then as it takes weight over the course of time, it separates. Tr 193-194. Inspector Adams stated that he designated this citation as moderate in negligence because even though it was so obvious that someone must have seen it, he could not designate it as high because he could not put the operator or a supervisor “right there to say that they saw it, but someone did.” Tr 194. However, he did confirm the fact that this section would have been subject to the pre- and on-shift examinations. Tr 195.

Three timbers were required to support this huge rib. It was in plain sight in a heavily trafficked area and was subject to mandatory examinations at least twice before the citation was issued. It is not necessary to prove that management knew of the condition, only that they should have known and that there were no mitigating factors to consider in order establishing a high degree of negligence. Crown has a long and flagrant history of fall-related accidents and clearly lacks any concern for the safety of their miners. I find the appropriate degree of negligence is high rather than moderate.

14. Citation No. 6675284 (Gov. Ex. 18)

Inspector Baum issued this citation on April 14, 2009 for an alleged violation of section 75.208 because he found:

A visible warning device or physical barrier was not installed to impede travel beyond permanent roof support. This condition was present in the number 2 entry of the 3rd West panel off the 1st North Sub-Mains. The continuous miner had holed the crosscut between number 1 entry and number 2 entry and did not post the last row of permanent support.

The citation was designated as significant and substantial, reasonably likely to cause an injury resulting in lost workdays or restricted duty, affection one person and involving a moderate degree of negligence on the part of the operator. The proposed penalty is \$634.00.

a. The Violation

The standard cited in this citation requires that “except during the installation of roof supports, the end of permanent roof support shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel beyond permanent support.” What Inspector Baum encountered during his inspection was a crosscut that had been mined between two entries with no visible warning posted to impede traffic in the unbolted crosscut. Tr 224. There were no roof supports being installed at the time the inspector cited this violation. Tr 225. Inspector Baum stated that the area should be flagged before the cut is made but, at a minimum, it had to be done as soon as it is made. Tr 228. When asked by the respondent if he was told there had been a flag posted earlier that had fallen off, Inspector Baum stated that he did not recall any such comment and he would have put it in his notes if that had been the case. Tr 230.

The violation was accepted by Crown but they requested that the gravity be reduced to unlikely because they believed that area had been flagged when the cut was made. The respondent stated at the hearing that they would provide an affidavit post-hearing from an individual who was aware of the flag being posted. By email dated January 2, 2011, Mr. Hayden indicated that they would not be submitting the affidavit. Ct. Ex. 1. There is no evidence that the area had been flagged off to contest this violation or mitigate the gravity. I find the standard was violated as cited.

b. Significant and Substantial

This citation was deemed S&S by Inspector Baum because, as he had previously testified, this mine has bad roof conditions throughout making a fall reasonably likely. The area in which he found this unsupported roof was an active area of the mine exposing miners to a reasonable likelihood of being injured by a roof fall. Tr 227. Inspector Baum believed that if struck by a roof fall, the injury would be reasonably serious and would, at a minimum, result in lost workdays or restricted duty. Such a fall could easily result in a fatality, however. Tr 226-227. Given the fact that only one miner would typically be traveling in this area at any one time, the inspector felt one miner would be exposed to this hazard. Tr 227. The operator was given only five minutes to abate this violation because it posed such a serious danger. Tr 229.

The testimony of Inspectors Lampley, Hoytheacock, Adams, and Baum make it inexorably clear that there exists a very serious and imminent potential for a roof or rib fall in Crown III due to geological conditions and lack of safety precautions. This is underscored by the dozens of roof falls recorded in the history of this mine, many of which have resulted in serious personal injury. Under these conditions, it is impossible for the operator to justify the risk posed to miners for allowing unsupported roof conditions to exist for even a minimal period of time. The fact that the operator has conceded the existence of each of these violations indicates to me that they not only knew of the unsafe practices being followed in this mine but that the safety of those who toiled underground was of little consequence to them. It is a well known truth that mine roofs are inherently dangerous and subject miners to the very real possibility of injury or death in the event of a fall. For this reason, I find that Inspector Baum’s assessment of this violation as S&S is justified.

15. Citations No. 6675296 (Gov. Ex. 25), and 6675299 (Gov. Ex. 27)

These citations were issued under section 75.220(a)(1) of the regulations by Inspector Baum during the April 24, 2009 and April 29, 2009 regular inspections as a violation of Crown's approved roof control plan. Gov. Ex. 33. Citation no. 6675296 alleges:

A violation of the operator's approved roof control plan is present in the 2nd South/Main West, 001/010 MMU. The crosscut right off of #1 entry at survey station 2600, is mined from 18'2" to 20'5" wide for a distance of approximately 17'. The approved roof control plan requires that the width of entries and crosscuts be mined to a maximum of 18'.

Citation no. 6675299 alleges the same facts except that the location of the violation was in the 3rd South/Main West working section, 001/010 MMU crosscut between 7 and 8. The area was mined to approximately 19'5" wide to 19'7" wide for a distance of approximately 25'.

Inspector Baum designated both violations as reasonably likely to result in an accident causing lost workdays or restricted duty, significant and substantial and resulting from moderate negligence on the part of the operator. He determined that one person was exposed to the hazard in the first citation and two persons in the second. The proposed penalty is \$897.00 on the first citation and \$873 on the second.

a. The Violation

Section 75.220(a)(1) provides that "Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered." The approved roof control plan for Crown III in effect at the time of this inspection provided that the maximum width of a main entry or main entry crosscut shall be 18'. Gov. Ex. 33 pg 1.

Crown argued that under a supplemental roof plan, if a cut exceeded 18' an additional bolt no less than 18 inches in length could be installed to bring the operator into compliance with the roof support plan. Inspector Baum testified that this supplemental plan required in the event an entry is driven wider than 18' or the ribs slough off wider than that width, a bolt no less than two feet in length must be installed between the rows of the bolts installed in the regular pattern. When questioned by the respondent why they were, then, not in compliance with the supplemental plan, Inspector Baum pointed out that the only bolts in the area were those on pattern according to the plan. There were no additional support bolts as required under the supplemental plan installed. Tr 274-276.

After Baum provided this explanation of why Crown was not in compliance with the roof control plan or the supplemental provision, Crown accepted these two violations as written. Tr 277. I therefore find these two citations were correctly cited and approve them as written.

II. PENALTIES

The Mine Act delegates the duty of proposing civil penalties for violations to the Secretary. 30 U.S.C. §§815(a) and 820(a). When an operator challenges the Secretary's proposed penalties, the Secretary petitions the Commission to assess them. 29 C.F.R. §2700.28. Once petitioned to assess the penalties, the Commission delegates the authority to the administrative law judges to assess the civil penalties *de novo*. Section 110(i), 30 U.S.C. §820(I). The administrative law judge is required by the Act to consider the following six statutory criteria in her assessment of the appropriate penalties:

(1) the operator's history of previous violations, (2) the appropriateness of such penalty to the size of the business of the operator charged, (3) whether the operator was negligent, (4) the effect on the operator's ability to continue in business, (5) the gravity of the violation, and (6) the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. 30 U.S.C. §820(i).

The penalty assessment for a particular violation is within the sound discretion of the administrative law judge so long as the six statutory criteria and the deterrent purpose of the Act are given due consideration. *Sellersburg Stone Co.*, 5 FMSHRC 287, 294 (Mar. 1983), *aff'd*, 736 F.2d 1147 (7th Cir. 1984); *Cantera Green*, 22 FMSHRC 616, 620 (May 2000).

I have given each of the six statutory criteria consideration as well as the deterrent purpose of the Act in assessing the penalties below. The parties entered into several stipulations of fact which affect the assessment of penalties. They are: 1) the operator produced 1,360,392 tons of coal in 2009; 2) Crown demonstrated good faith in abating the cited citations, and 3) the proposed penalties will not affect Crown's ability to remain in business. Secretary's Prehearing Response. The last stipulated fact was withdrawn at the commencement of the hearing and respondent was provided the opportunity to provide financial records post-hearing to contest this issue. By email dated January 2, 2011, they withdrew their objection to this stipulation and declined to submit any financial information. Ct. Ex. 1. I find, therefore, that they have conceded this point.

The parties entered into a settlement agreement on 44 citations prehearing. The terms of this agreement are contained in Gov. Ex. 46. They have agreed to modify Citation No. 6675094 to reasonably likely to unlikely, high negligence to moderate negligence and S&S to non-S&S with a penalty of \$270.00; Citation No. 6675530 from permanently disabling to lost workdays or restricted duty with a penalty of \$100.00; Citation No. 6675531 from 10 persons affected to 2 with a penalty of \$745.00; Citation No. 6675533 from reasonably likely to unlikely, and permanently disabling to lost workdays or restricted duty with a penalty of \$191.00; Citation No. 6675097 from reasonably likely to unlikely with a penalty of \$426.00; Citation No. 6675534 from permanently disabling to lost workdays or restricted duty and from 18 persons affected to 2 with a penalty of \$109.00; Citation No. 6675098 from reasonably likely to unlikely and from 40 persons affected to 2 with a penalty of \$335.00; Citation No. 6675535 from permanently disabling to lost workdays or restricted duty and from 9 persons affected to 2 with a penalty of \$119.00; Citation No. 6675536 from permanently disabling to lost workdays or restricted duty, affecting 2 persons instead of 9 with a penalty of \$335.00; Citation No. 6675542 from 3 persons affected to 1 and moderate negligence to low with a penalty of \$128.00; Citation No. 6675546 from moderate to low negligence with a penalty of \$100.00; Citation No. 6675552 from lost workdays or restricted duty to no lost workdays and from moderate to low negligence with a penalty of \$100.00; Citation No. 6675556 from high

negligence to moderate with a penalty of \$1,112.00; Citation No. 6675557 from 20 persons affected to 1 and from moderate negligence to low with a penalty of \$100.00; Citation No. 6675558 from moderate to low negligence with a penalty of \$635.00; Citation No. 6675325 as assessed with a penalty of \$127.00; Citation No. 6675562 from moderate to low negligence with a penalty of \$100.00; Citation No. 6675832 from moderate to low negligence with a penalty of \$426.00; Citation No. 6675833 from moderate to low negligence with a penalty of \$100.00; Citation No. 6675834 as assessed with a penalty of \$224.00; Citation No. 6675835 as assessed with a penalty of \$499.00; Citation No. 6675838 from 10 persons affected to 1 and from moderate to low negligence with a penalty of \$100.00; Citation No. 6675842 from high to moderate negligence with a penalty of \$500.00; Citation No. 6675848 from fatal to no lost workdays with a penalty of \$100.00; Citation No. 6675850 from fatal to no lost workdays with a penalty of \$100.00; Citation No. 6675277 as assessed with a penalty of \$540.00; Citation No. 6675736 from 13 persons affected to 1 with a penalty of \$128.00; Citation No. 6675280 from reasonably likely to unlikely with a penalty of \$109.00; Citation No. 6675416 from high to moderate negligence with a penalty of \$207.00; Citation No. 9942564 from high to moderate negligence with a penalty of \$1,530.00; Citation No. 6675744 from fatal to no lost workdays with a penalty of \$100.00; Citation No. 6675286 from fatal to permanently disabling with a penalty of \$100.00; Citation No. 6675288 from 4 to 1 person affected with a penalty of \$285.00; Citation No. 6675748 as assessed with a penalty of \$499.00; Citation No. 6675750 from 12 to 1 person affected with a penalty of \$128.00; Citation No. 6675294 from high to moderate negligence with a penalty of \$100.00; Citation No. 7493284 from reasonably likely to unlikely with a penalty of \$309.00; Citation No. 6675903 from fatal to permanently disabling with a penalty of \$191.00; Citation No. 6675453 from permanently disabling to lost workdays or restricted duty with a penalty of \$163.00; Citation No. 6675906 from fatal to lost workdays or restricted duty and from 20 to 1 person affected with a penalty of \$425.00; Citation No. 6675457 as assessed with a penalty of \$190.00; Citation No. 6675459 from permanently disabling to lost workdays or restricted duty with a penalty of \$634.00; Citation No. 6675909 from high to moderate negligence with a penalty of \$1,795.00; and, Citation No. 6675910 from high to moderate negligence with a penalty of \$127.00. The total penalties agreed upon by the parties are \$14,641.00.

I accept the stipulations by the parties and the proposed modifications and penalties on the settled citations as being appropriate to this operator's size, ability to pay, history of violations, degree of negligence, seriousness of the violation and good faith abatement of the condition.

As to the citations adjudicated at the hearing, I assess the following penalties:

Citation No. 6675539: I assess a penalty of \$687.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675540: I assess a penalty of \$3,689.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675541: I assess a penalty of \$3,689.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675847: I assess a penalty of \$634.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 7493279: I assess a penalty of \$634.00 based upon the fact that this citation is for a violation of the same standard as in citations nos. 6675847 and 7493296 with the same gravity and degree of negligence. The penalty, therefore, should be the same in all three violations and I find based upon the gravity and negligence, this penalty is appropriate.

Citation No. 7493286: I assess a penalty of \$634.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675287: I assess a penalty of \$207.00 based upon my finding that this violation was not significant and substantial.

Citation No. 6675290: I assess a penalty of \$207.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675297: I assess a penalty of \$207.00 based upon my finding that this violation was not significant and substantial.

Citation No. 6675836: I assess a penalty of \$3,405.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675278: I assess a penalty of \$1203.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675733: I assess a penalty of \$1304.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675454: I assess a penalty of \$3500.00 based upon my finding the degree of negligence is high rather than moderate, and the gravity is fatal rather than permanently disabling as set forth above.

Citation No. 6675284: I assess a penalty of \$634.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675296: I assess a penalty of \$897.00 as proposed by the Secretary for the reasons set forth above.

Citation No. 6675299: I assess a penalty of \$897.00 based upon the fact that the circumstances surrounding the violation were identical to that involved in citation no. 6675296. I find based upon the degree of negligence and the gravity of the hazard the penalty is appropriate as set forth above.

A total of \$ 22,428 is assessed for the violations heard and decided herein. The total penalty for the four dockets (Lake 2009-418, Lake 2009-419, Lake 2009-494 and Lake 2009-542) is \$37,069.

III. ORDER

Centre Crown Mining, LLC. is **ORDERED** to pay the Secretary of Labor the sum of

\$37,069.00 within 30 days of the date of this decision.⁶

Priscilla M. Rae
Administrative Law Judge

⁶ Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.

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