

only removed to facilitate the repairs and Respondent would have replaced the guards once the adjustments were made. Respondent contends this was not a violation of the Mine Act.

The Secretary reviewed the Citation, the surrounding evidence, and each party's arguments. Without conceding Respondent's arguments, but given the conflicting evidence and the associated litigation risk, the Secretary has agreed to a reduction of the proposed civil money penalty. Neither party admits that the arguments of the other party are correct.

WEST 2014-31M

8762608	\$100.00		\$50.00
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No modifications to the citation; Reduce the proposed penalty

The Secretary represents that the Respondent takes the position and would have alleged at hearing that the cited area was not a roadway. In addition, the Respondent contended that the citation should be vacated because the CAT 930G only traveled the cited area once and a spotter was used to help guide the equipment through the cited area. Respondent has also contended that this area was not part of the mine and was on a separate commercial area not subject to MSHA jurisdiction.

The Secretary reviewed the Citation, the surrounding evidence, and each party's arguments. Without conceding Respondent's arguments, but given the conflicting evidence and the associated litigation risk, the Secretary has agreed to a reduction of the proposed civil money penalty. Neither party admits that the arguments of the other party are correct.

8762609	\$100.00		\$50.00
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No modifications to the citation; Reduce the proposed penalty

The Secretary represents that the Respondent takes the position and would have alleged at hearing that the gravity was less than contended because the 120v well pump was not plugged in and the copper conductors were not exposed. Respondent would have argued the cited splice did not create an electrocution hazard. In addition, Respondent maintains that the splice was temporary, and it was performed to prevent miners from contacting the wires. Finally, Respondent would have argued that a permanent splice had been ordered to comply with MSHA requirements prior to the inspection. Once Respondent received the permanent splice, and prior to resuming production, it was installed.

The Secretary reviewed the Citation, the surrounding evidence, and each party's arguments. Without conceding Respondent's arguments, but given the conflicting evidence and the associated litigation risk, the Secretary has agreed to a reduction of the proposed civil money penalty. Neither party admits that the arguments of the other party are correct.

		Total Amended Penalties:	\$150.00
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The Court accepts the representations and modifications of the Secretary as set forth in the motion to approve settlement. However, the Court unequivocally rejects the Secretary's

claim in its motion that it need not supply a factual basis to the Court for any compromised, mitigated or settled proposed penalty as that stance is contrary to Congress' express command at section 110(k) of the Mine Act. The Motion takes what has become the Secretary's now routine approach of insisting that it need do no more than rely upon its pleadings together with a statement reflecting its changes but without any explanation to justify those changes. Then, within the same motion, the Secretary proceeds to provide the required information and thereby relents from its claim that the information need not be supplied. Viewing the reluctantly supplied justification, the Court then considered the representations supplied and finds that the modifications are reasonable and therefore concludes that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Act.

Accordingly, the motion to approve this settlement is **GRANTED** and the settlement amount of \$150.00 is accepted as appropriate. The Court further notes that the parties agree that the Respondent has already recently paid the settlement amount of \$150.00 associated with these two dockets.¹

William B. Moran

William B. Moran
Administrative Law Judge

Distribution:

Lauren A. Polk, Office of the Solicitor, 1999 Broadway, Suite 800, Denver, CO 80202

John Richards Construction, Attn: John Richards, Owner 2824 Hwy 83 Seeley Lake, MT 59868

¹ On July 1, 2014, Respondent mailed the agreed upon settlement amount of \$150.00 to the MSHA U.S. Department of Labor Payment Office. Payment was received at the assessments office on July 3, 2014.