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

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| SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), | PETITIONER | Civil Penalty Proceedings<br>Docket No. BARB 79-307-P<br>A.O. No. 15-11348-03002 |
| v. | | Docket No. BARB 79-285-P<br>A.O. No. 15-11348-03001 |
| THE PITTSBURG & MIDWAY COAL MINING COMPANY, | RESPONDENT | Docket No. PIKE 79-129-P<br>A.O. No. 11348-03004 F |
| | | Docket No. KENT 79-74<br>A.O. No. 15-11348-03006 |
| | | Docket No. KENT 79-180<br>A.O. No. 15-13348-03007 |
| | | Docket No. KENT 79-367<br>A.O. No. 15-13348-03009 |
| | | Docket No. KENT 79-269<br>A.O. No. 15-11348-03008 |
| | | Docket No. KENT 79-99<br>A.O. No. 15-11348-03003 |
| | | Pleasant Hill Surface Mine |
| | | Docket No. KENT 79-229<br>A.O. No. 15-02021-03005 |
| | | Colonial Strip Mine |

DECISIONS

Appearances: Marvin Tincher, Attorney, Office of the Regional Solicitor, U.S. Department of Labor, Nashville, Tennessee, for the petitioner George M. Paulson, Esq., Denver, Colorado, for respondent Harold A. Hintze, Esq., Salt Lake City, Utah, for proposed intervenor Ford, Bacon and Davis Utah, Inc.

Before: Judge Koutras

Statement of the Proceedings

These consolidated civil penalty proceedings concern proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). Hearings were conducted in Docket Nos. BARB 129-P, BARB 285-P, and BARB 79-307-P, in Evansville, Indiana, on August 22, 1979, and the parties appeared and were represented by counsel. Subsequently, the petitioner filed proposals for assessment of civil penalties in Docket Nos. KENT 79-74, KENT 79-180, KENT 79-269, and KENT 79-367, and on motion by the respondent, these four dockets were consolidated with the three heard in Evansville. The motion was granted because of respondent's assertions that all of these cases involve the same legal issues as those covered by the Evansville hearings, namely the question of whether the proposals for assessment of civil penalties should have been served on certain independent contractors and subcontractors performing construction work for the respondent at its Pleasant Hill Surface Mine. Further, respondent's motions of February 4, 1980, concurred in by the petitioner, to consolidate Docket Nos. KENT 79-99 and KENT 79-229, with the previously-filed seven dockets was granted.

During the August 22, 1979, hearings the parties indicated that they would jointly prepare and file with me a proposed stipulation and order for disposition of the cases which were heard, and that such stipulation would address the question of contractor and subcontractor responsibility and liability for the citations which were the subject of those proceedings. Thereafter, by letter received October 11, 1979, petitioner advised me that the parties were unable to agree upon the terms of a stipulation and proposed order as contemplated by the Evansville proceedings and that they had likewise failed to agree as to appropriate language in a motion by petitioner for continuance of the cases to which respondent would have no objection. At the same time, petitioner filed a motion for an indefinite continuance of all of the dockets pending final action by the Commission on the question concerning the Secretary's discretion to cite a mine/owner-operator for violations attributable to independent contractors on the mine property. In support of its motion, petitioner asserted that the parties were unable to stipulate all facts which would make a resumed hearing in these dockets unnecessary, but that a decision by the Commission in MSHA v. Monterey Coal Company, HOPE 78-469 through HOPE 78-476, which addresses the question of the Secretary's discretion to cite the mine owner, may be dispositive of the liability question and that the legal questions regarding the right of certain contractors to intervene herein as respondents and the appropriate entities to be held accountable for the violations as such violations might affect respondent's non-compliance history in future penalty assessments can then be resolved on the basis of the present record or on a stipulation of additional facts which do not appear to be in dispute.

On October 22, 1979, respondent filed a motion in opposition

to the petitioner's motion for an indefinite continuance pending the Commission's decision in the Monterey case, and requested that I proceed with decisions

in these cases. In support of its opposition to any further delay, respondent argued that by awaiting the Commission's decision in Monterey the decisions in the instant cases will be unduly delayed and that even if petitioner prevails in Monterey it will likely continue to cite mine owner-operators for administrative convenience rather than to carry our what respondent believes is the intent of Congress, namely, to cite the independent contractor responsible for the violations. Respondent also requested that its contractor, Ford, Bacon & Davis Utah and certain subcontractors be allowed to intervene and be substituted as parties in these proceedings, that I accept the offer of the contractor and certain named subcontractors to pay the civil penalties to which they admit responsibility and liability, that respondent be dismissed as a party respondent from all of these proceedings, and that none of the penalties for violations assessed in these proceedings be charged against respondent's history of violations at its Pleasant Hill Mine.

Relying on the Commission's decisions in MSHA v. Monterey Coal Co., HOPE 78-469 and HOPE 78-476, November 13, 1979, and MSHA v. Old Ben Coal Company, VINC 79-119, October 29, 1979 which, I concluded were dispositive of respondent's "independent contractor" defenses in these dockets, I issued an order on December 10, 1979, and made the following rulings with respect to the motions filed by the parties:

1. Respondent's motion to permit its contractors and subcontractors to intervene and be substituted as parties was DENIED.

2. Respondent's request to permit such contractors and subcontractors to pay the civil penalties for which they claim responsibility was DENIED.

3. Respondent's motion that it be dismissed as the respondent in these proceedings was DENIED.

4. Petitioner's motion for an indefinite continuance was DENIED.

My order of December 10, 1979, directed the parties to advise me of any stipulations or agreements as to all issues not in dispute, and any remaining issues which may be required to be tried by additional hearings. In compliance with my order, respondent advised me by letter dated January 9, 1980, that the parties were in the process of preparing a stipulation which, together with the record and exhibits made at the hearings of August 22, 1979, would enable me to decide the case without the need for further evidentiary hearings. Regarding the independent contractor/mine-owner issue, respondent asserted that the factual question as to why MSHA elected the respondent as the party to bring these enforcement proceedings against is still unresolved, but in light of the history of the problem which indicates that the sole reason it is the respondent is MSHA's continued policy of enforcing violations committed by independent contractors against the owner

of the mine at which the contractor is employed, respondent suggested that the record contains sufficient evidence for me to decide this issue and it specifically makes reference to hearing Exhibits R-1 through R-3, which are identified as follows:

(R-1) - November 17, 1978, Memorandum from MSHA Assistant Joseph O. Cook to MSHA District Managers advising them that "[P]ending issuance of regulations to identify independent contractors, the instructions contain in memorandums dated June 3 and June 17, 1975, subjects, "Contractors Associated with the Coal Mining Industry" and "Violation Citations Issued to Contractors," respectively, remain in effect.

(R-2) - June 3, 1975, Memorandum from former MSHA Assistant Administrator John W. Crawford to MSHA District Managers, citing the District Court decision in ABC v. Morton, and instructing all MSHA enforcement personnel to cite mine operators for all violations observed when inspecting contractors performing work on coal mine property.

(R-3) - June 17, 1975, Memorandum from MSHA Assistant Administrator Crawford to MSHA District Managers, following-up on his June 3 memorandum, instructing MSHA enforcement personnel to issue violation citations committed by contractors to the mine owner if the citations have not already been processed under section 109 of the 1969 Act.

In addition to the independent contractor issue, respondent also requested that I make certain additional findings in regard to the following points of law in my final order concerning these cases:

1. Whether these citations will become part of the citation history of the Pittsburg & Midway Coal Mining Co. for the purposes of 30 C.F.R. 100.3(c).

2. Whether the negligence involved in these citations must legally be attributed solely to the independent contractor actually committing the safety violation or whether it can also be attributed to the owner on a theory of vicarious liability.

3. Whether the fact that the citations involved in these cases were issued at later dates than the citations involved in the cases of MSHA v. Old Ben Coal Company, Docket No. 79-119 and MSHA v. Monterey Coal Co., Dockets HOPE 78-469 - HOPE 78-476, affects the applicability of the Old Ben Coal Company decision to these cases in light of the different facts involved in and the basis of decision used by the Mine Safety and Health Review Commission in the Old Ben Coal Company case.

4. Whether the fact that the independent contractors involved in these cases have petitioned for intervention and identified themselves to MSHA as the parties legally responsible for the violations involved in these cases affects the applicability of the Old Ben Coal Company decision in light of the different facts involved in and the basis of decision used by the Mine Safety and Health Review Commission in the Old Ben Coal Company case.

In further response to my order of December 10, 1979, petitioner advised me by letter dated January 9, 1980, that the parties had reached agreement on a stipulation which they believe will enable me to dispose of the cases without further hearing and that as soon as it is finalized it would be filed with me for further consideration. In addition, petitioner advised that the agreement reached did not represent a proposed settlement of the cases since the parties are seeking to preserve their appeal rights in light of developments in the Old Ben and Monterey cases.

On January 25, 1980, the petitioner and the respondent submitted their joint stipulation and agreed that these proceedings may now be disposed of on the basis of the present record and documents filed, including all pleadings, motions, exhibits, transcript of hearing, orders and stipulations and that the parties' rights of appeal are expressly reserved. However, in his transmittal letter, respondent's counsel states that there remain three questions to which the parties are unable to stipulate, namely:

1. The reasons for MSHA selecting the respondent rather than the contractors for enforcement of the citations.

2. Whether the independent contractors in these proceedings are "independent contractors" within the meaning of MSHA's proposed Rules, 30 CFR 45, published in the Federal Register on August 14, 1979.

3. Whether the independent contractors involved in these cases have admitted responsibility for the citations. (In this regard, respondent invites my attention to pgs. 28-29 of the August 22 Evansville hearing where contractor's counsel Hintze stipulated to liability on behalf of at least three of the contractors).

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, P.L. 95-164, 30 U.S.C. 801 et seq.

2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).

3. Commission Rules, 29 CFR 2700.1 et seq.

## Issues

The principal issues presented in these proceedings are (1) whether respondent has violated the provisions of the Act and implementing regulations as alleged in the proposals for assessment of civil penalties filed, and, if so, (2) the appropriate civil penalties that should be assessed against the respondent for the alleged violations based upon the criteria set forth in section 110(i) of the Act. Additional issues raised by the parties are identified and disposed of in the course of these decisions.

In determining the amount of a civil penalty assessment, section 110(i) of the Act requires consideration of the following criteria: (1) the operator's history of previous violations, (2) the appropriateness of such penalty to the size of the business of the operator, (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 operator in attempting to achieve rapid compliance after notification of the violation.

Additional issues raised by the parties are identified and disposed of in the course of my findings, conclusions, and rulings made in these cases.

## Discussion

Docket No. BARB 79-307-P

104(a) Citation No. 399328, September 19, 1978, 30 CFR 77.1701: "The ho 012 TD-15 Dozer and 613 scraper used by Koester Const. Corporation are not provided with seat belts. Roll protection is provided. Responsibility of Roger Huser, project manager."

Docket No. BARB 79-285-P

104(a) Citation No. 399321, September 18, 1978, 30 CFR 77.1605(a): "Link belt mobile crane used by J & F Const. Co. The over head cab window is not in good condition in that the glass is broken with fragged edges. Responsibility of Roger Huser, project manager."

104(a) Citation No. 399322, September 18, 1978, 30 CFR 77.208(d): "Oxygen and acetylene tanks used by J & F Const. Co. were not secured in a safe manner. Responsibility of Roger Huser project manager."

104(a) Citation No. 339323, September 18, 1978, 30 CFR 77.1109(a): "The supply trailer used by J & F Const. Co. is not provided with a fire extinguisher. Responsibility of Roger Huser, project manager."

104(a) Citation No. 399324, September 18, 1978, 30 CFR 77.1710(e): "Ted Rodgers, working for Davco Corporation is not

wearing suitable foot wear.  Responsibility of Roger Huser, project manager."

104(a) Citation No. 399325, September 18, 1978, 30 CFR 77.410: "Red Ford back dump and John Deere back hoe used by Davco Corp. are not provided with back-up alarms. Responsibility of Roger Huser, project manager."

104(a) Citation No. 399326, September 18, 1978, 30 CFR 77.402: "Hand held saber saw and hand held portable grinder is not equipped with controls requiring constant hand or finger pressure to operate used by Davco Corp. Responsibility of Roger Huser, project manager."

104(a) Citation No. 399329, September 19, 1978, 30 CFR 77.1109(c)(1): "The 613 scraper and Ford 7000 service truck used by Koester Corporation are not provided with fire extinguishers. Responsibility of Roger Huser, project manager."

104(a) Citation No. 339330, September 19, 1978, 30 CFR 77.1102: "The Ford 700 service truck used by Koester Corp. is not provided with warning sign against smoking and open flame. Responsibility of Roger Huser, project manager."

104(a) Citation No. 399335, September 26, 1978, 30 CFR 77.1713(a): "Daily on-shift safety inspections are not being made and recorded by a certified person at the mine. Responsibility of Roger Huser, project manager."

Docket No. PIKE 79-129-P

This docket concerns two citations in which MSHA elected to waive the assessment formula contained in 30 CFR 100.3 in determining the civil penalties, and the citations were "specially assessed" under section 100.4.

104(a) Citation No. 399333, September 21, 1978, 30 CFR 77.400(a): "The hand held Black & Decker cut-off machine was not provided with a guard. The cut-off machine was being used by J & F construction Co. N 11. This citation was issued during a fatality accident investigation."

104(a) Citation No. 399334, September 21, 1978, 30 CFR 77.404(a):

> The Black and Decker portable hand held cut off machine was not maintained in safe working condition in that an over size unguarded blade had been installed and used. The blade disintegrated resulted [sic] in a fatality accident. The machine was rated to use no larger than a 12 inch diameter blade. The blade in use was approximately 19 inches in diameter at the time of investigation (J & F Const. Co. ID N 11).

Docket No. KENT 79-180

104(a) Citation No. 0795019, April 16, 1979, 30 CFR 77.1605(b): "The White No. 50 Chevrolet truck used by Coal Rigging Contracting Corp. was not provided with a parking brake.

Responsibility of Sonny Arnold, foreman."

104(a) Citation No. 0795020, April 16, 1979, 30 CFR 77.205(b). "The travelway in draw off tunnel used by Coal Rigging Contracting Corp. was not kept clear of stumbling and tripping hazard. Responsibility of Sonny Arnold, foreman."

104(a) Citation No. 0795229, April 16, 1979, 30 CFR 77.402: "The 3/8 and 1/2 electrical drills used by Cambron Electrical Co. was not equipped with controls requiring constant hand or finger pressure to operate."

Docket No. KENT 79-74

107(a) Citation No. 400843, December 31, 1978, 30 CFR 77.404: "The hand held grinder serial No. 627199 electric powered 115 volt and RPM rated 6500 was provided with a buffing disc rated maximum 6000 RPM. This grinding device was connected to the power source. Under the supervision of J & F Construction Co. Jim Bethel."

Docket No. KENT 79-269

107(a) Citation No. 0794248, April 11, 1979, 30 CFR 77.404(a): "The Lorain Crane No. 11 operated by Coal Rigging Construction Co. at the Pleasant Hill Mine construction site is hereby ordered to be removed from service in that the hoist brake will not hold a load and the swinger will not reverse in a reasonable distance."

107(a) Citation No. 0794249, April 11, 1979, 30 CFR 77.404 (a): "The Grove Crane No. CP operated by Coal Rigging Construction Co. at the Pleasant Hill Mine construction site is hereby ordered removed from service in that the swing lock brake is not working."

Docket No. KENT 79-367

104(a) Citation No. 0797717, August 1, 1979, 30 CFR 77.204: "At tipple construction site on third floor of tipple the opening for the elevator was not protected. On second floor the opening for wash box was not protected and sump in bottom of raw coal hopper was not protected. (Coal Rigging Contractors)."

104(a) Citation No. 0797718, August 1, 1979, 30 CFR 77.205(b): "At tipple construction site on third floor and second floor of tipple travelways where persons were required to travel and work were not kept clear of all extraneous material and stumbling hazards. (Coal Rigging Contractor)."

Docket No. KENT 79-99

104(a) Citation No. 399327, September 18, 1978, 30 CFR 71.400: "Bathing facilities change room and sanitary flush toilets are not provided for the employees at the mine. Responsibility of Roger Huser, project manager."

104(a) Citation No. 399332, September 21, 1978, 30 CFR

77.701:  "The electric powered hand held cut off machine was not provided with frame

grounding in that a two conductor exterior cable was used and the machine was not double insulated. This machine was in service at the shop office construction site. J & F Construction Co. I.D. N 11."

104(a) Citation No. 400844, December 21, 1978, 30 CFR 77.701:

> The Fornly ram pressure machine electric motor was not frame grounded in that the grounding prong was broken off the plug and a two conductor extension cord was in use and the ventilation fan was not frame grounded in that the ground prong was missing from the plug located in the test building near the office trailers (Geological Associates) under Ford, Bacon Davis Utah Contractors.

Docket No. KENT 79-229

104(a) Citation No. 079425, May 15, 1979, 30 CFR 77.1102: "Warning signs are not posted at the liquid portable storage tank located at the Smith-Miller construction site. The responsibility of Guy Brownbuger."

104(a) Citation No. 0794254, May 15, 1979, 30 CFR 77.1109(e)(1): "Portable fire extinguishers are not provided at the liquid portable storage tank located at the Smith-Miller construction site. The responsibility of Greg Brownbuger."

Stipulations

During the hearing of August 22, 1979, the parties agreed to the following stipulations (Tr. 7-10):

> 1. Respondent Pittsburg and Midway has been inspected previously at two surface mines operated in Western Kentucky. A significant number of safety and health violations of the act involved had been disclosed by MESA and MSHA, admitted at this time, by those inspections for which ordinary negligence is conceded. Respondent exhibited good faith in correcting or abating those past violations.
>
> 2. There was no gross negligence involved in any of those violations; the number of such violations was not large and the penalties were not large.
>
> 3. The respondent is a wholly-owned subsidiary of Gulf Oil Company, and the size of its business in 1978 was approximately eight million tons of coal produced.
>
> 4. Respondent's operations, including those at the Pleasant Hill Mine, affect commerce within the meaning of the statute and any assessment of penalties approximating those proposed in the matters pending for hearing will not seriously affect P and M's ability to continue in business.

5. Copies of the citations contested in this proceeding were identified as Exhibits P-1 through P-11 and P-13. And those, as well as a copy of the report of the fatality investigation which was identified as P-12 may be received in evidence. There is no issue as to the correct sections of the safety regulations cited.

6. Respondent exhibited good faith in correcting or causing correction and abatement of the alleged conditions on which the citations involved in these proceedings are based.

7. Bill Brasher, an employee of P and M, was mine superintendent of respondent's Pleasant Hill mine during the period involved in these proceedings.

8. Roger Huser was an employee of the Gulf Mineral Resources Company, a division of the Gulf Oil Company, and was assigned to the P and M mine construction site, the Pleasant Hill surface mine.

9. No coal has been or was being mined by the respondent at the Pleasant Hill mine at the time involved in these proceedings. Preparation and construction of the facilities, including a building to house shop offices and abating [sic] facilities, plus a railroad spur track and a loading hopper were in progress under construction agreement -- a construction agreement between P and M and Ford, Bacon and Davis Utah, Inc. which will be designated hereafter as the contractor. Various parts of the construction were being carried out by subcontractors pursuant to agreements between them and the contractor. There was no privity contract between P and M and the subcontractors, including those identified in Exhibits P-1 through P-13.

## Findings and Conclusions

### The Independent Contractor Issue

MSHA's prevailing enforcement policy at the time the citations in these proceedings were issued was to cite the mine owner for all citations generated on its mine property, regardless of the fact that they resulted from work being done by contractors. Further, although MSHA has argued that it does not routinely issue mine identification numbers to contractors, two of the citations issued in PIKE 79-129-P, contain mine identification numbers apparently assigned to the J & F Construction Company. Further, with the exception of Citation No. 399327 (KENT 79-99) for lack of bathing and toilet facilities, and one citation issued in BARB 79-285-P (Citation No. 399335) for failure to conduct a daily onshift examination, all of the citations contain findings by the inspector that the equipment cited or the practices

constituting violations resulted from work being performed by contractors, and they are identified collectively as follows:

1. Koester Construction Corporation.

2. J & F Construction Company.

3. Davco Corporation.

4. Coal Rigging Contracting Corporation.

5. Cambron Electrical Company.

6. The parties have stipulated that citation 399335 is the responsibility of contractor Ford, Bacon & Davis Utah Inc. (See also, Tr. 19).

7. Smith-Miller Construction Company (KENT 79-229).

8. Geological Associates (Citation 400844-KENT 79-99).

MSHA's enforcement policy is reflected in the aforementioned hearing Exhibits R-1 through R-3. The November 17, 1978, Memorandum (R-1), sets forth MSHA's general inspections policies, and on page 9, states as follows: "Pending issuance of regulations to identify independent contractors, the instructions contained in memorandums dated June 3 and June 17, 1975, subjects, "Contractors Associated with the Coal Mining Industry" and "Violation Citations Issued to Contractors," respectively, remain in effect."

The June 3, 1975, MSHA Memorandum (R-2), quotes pertinent portions of District Court Judge Gessell's opinion in ABC v. Morton, and contains the following instructions:

> Memoranda of April 19, 1973, "Issuing Notices and Orders to Contractors on Mine Property" and June 29, 1973, "Assignment of identification numbers to contractors," are hereby rescinded.
>
> We will continue, as in the past, to inspect mine construction work, however, where violations or other hazardous conditions or practices are observed, appropriate Notices and/or Orders shall be issued to the mine operator (they shall not be issued to the contractor or construction company unless the contractor or construction company is also the mine owner, etc.). In accordance with the Court's ruling the mine operator is responsible for the contractor's compliance with the Regulations and the Act.
>
> Effective upon receipt of this memorandum, Coal Mine Health and Safety enforcement personnel will cite coal mine

operators for all violations observed when inspecting contractors performing work on coal mine property.

MSHA's June 17, 1975 Memorandum (R-3), states as follows:

> As a follow-up to our memorandum dated June 3, 1975, concerning contractors doing mine construction work, this relates to the handling of citations issued to such contractors prior to the receipt of our June 3 memorandum.
>
> Notices and/or Orders, citing violations and issued to contractors will be reissued to the appropriate mine operator, except in instances where such citations have been processed pursuant to Section 109 of the Act, penalties paid and/or the cases closed. All such citations that have not been transmitted to the Assessment Office should be retained in the issuing office and reissued to the proper mine operator prior to transmitting.
>
> Notices and/or Orders issued to mine construction contractors, citing violations and transmitted to the Assessment Office, for processing under Section 109, but penalties have not been paid nor the case closed, will be returned to the appropriate issuing office to be reissued to the proper mine operator.
>
> In cases where Notices and/or Orders have been referred to the Associate Solicitor, Division of Mine Health and Safety, the Associate Solicitor will (1) notify the Assessment Office which will notify the District Office to reissue the Notice and/or Order to the proper mine operator and (2) file a motion to substitute parties.
>
> All Notices and/or Orders affected shall be modified and reissued to the appropriate mine operator. The following guidelines shall be adhered to:
>
> 1. Notices (and Orders citing violations) issued to contractors that have not been disposed of under Section 109 of the Act shall be modified and reissued to the appropriate mine operator.
>
> 2. In modifying and reissuing the citations, the inspector will use the date of the modification, however he will refer to the original citation by No. and date and attach a copy of the original to the modification.
>
> 3. On Modification, Form 2, following the statement, "is hereby modified as follows, * * *" use an explanation of what is being done and why, such as, By virtue of the U.S.

District Court for the District of Columbia, decision in Civil Action No. 1058-74, this modification is made to show the mine owner, in lieu of the contractor, as the operator charged with noncompliance of the cited regulations (see attachments).

Respondent's Argument

Respondent takes the position that petitioner should have cited the independent contractors identified in these proceedings for the violations described in each of the citations issued and that each of these contractors are independent contractors within the meaning of MSHA's proposed rules, 30 CFR, Part 45, published in the Federal Register on August 14, 1979. Under the circumstances, respondent argues that it was improper and contrary to the Act for MSHA to cite the respondent for the violations solely for the reason that respondent is the owner-operator of the mine. Inasmuch as the contractors have admitted responsibility for the violations, respondent argues further that they should be permitted to intervene in these proceedings and that respondent's motion that it be dismissed as a party-respondent should have been granted.

Petitioner's Argument

MSHA's position is that respondent was the operator of the mine in question at the time the citations were issued and therefore it was proper and appropriate under the circumstances to cite respondent for those violations, and that its motion to be dismissed as a party-respondent was properly denied.

It seems clear to me from the facts presented in these proceedings that at the time the citations were issued and the petitions for assessment were filed, MSHA's enforcement policy was that owner-operators were liable for the violations of their independent contractors. Although respondent has made a most persuasive and cogent argument with respect to the basic unfairness in an enforcement scheme which penaltizes a mine owner for violations over which it has no control, and which were caused by the independent contractors and did not endanger any of the mine owners' employees, I am constrained to follow the decisions of the Commission in MSHA v. Old Ben Coal Company, VINC 79-110, October 29, 1979, and MSHA v. Monterey Coal Company, HOPE 78-469 and HOPE 78-476, November 13, 1979, and I conclude that those decisions are controlling and dispositive of the independent contractor defenses raised by the respondent in these proceedings. Although the Commission seemingly recognized the folly of MSHA's continued policy decision to cite only mine owners for the violations attributable to independent contractors, it opted not to disturb that policy for the sake of "consistent enforcement." As I interpret these Commission decisions, the only conclusion I can draw is that the Commission has at this point in time given its blessing to MSHA's policy decision to enforce the Act only against owner-operators and not contractors, and in so doing, the Commission has specifically permitted the Secretary additional time within which to

promulgate

and implement his proposed independent contractor regulatory guidelines as published in the Federal Register on August 14, 1978, 44 Fed. Reg. 47746-47753. Under these circumstances, respondent's independent contractor defenses raised in these proceedings are rejected and I find and conclude that MSHA properly cited the respondent for the violations in question and that the respondent is liable for them. I am not persuaded by respondent's arguments that the factual record adduced in these proceedings indicates that the identified independent contractors are independent contractors within the meaning of MSHA's proposed rules. Those rules are at this point in time only proposed rules and have not been promulgated or implemented as final MSHA guidelines.

In MSHA v. Republic Steel Corporation, IBMA 76-28 and IBMA 77-39, decided by the Commission on April 11, 1979, it was held that under the 1969 Act, a mine owner may be held responsible for violations of the Act created by independent contractors even though none of the mine owner's employees were exposed to the violative conditions and the mine owner could not have prevented the violations. In Old Ben, a case decided under the 1977 Act, the Secretary conceded that Old Ben was proceeded against under an agencywide policy to enforce the Act against only owner-operators for contractor violations. Although the Commission recognized the fact that the Secretary's enforcement policy "had its roots in the district court's decision in ABC v. Morton," which was subsequently reversed, indicated that any doubt concerning the Secretary's ability to proceed against contractors was dispelled by the passage of the 1977 Act, and observed that "if the Secretary's decision to proceed against Old Ben was made pursuant to an enforcement policy based solely on the discredited foundation of ABC v. Morton, there would be no doubt that his decision was improper," the Commission, nonetheless, affirmed Old Ben on the basis of the Secretary's assertion that its enforcement policy was an interim one pending adoption of its proposed independent contractor regulations.

In its posthearing briefs filed in these proceedings, respondent suggests that the facts in these proceedings may be different from those which prevailed at the time Old Ben and Monterey were decided. It further suggests that the basis for the Commission's decisions in those cases may be different from those presented here in that the citations involved in these cases were issued at later dates than those involved in Old Ben and Monterey. After careful analysis of the Commission's decisions in Old Ben and Monterey, I can find no factual distinctions in the cases, nor can I find any distinctions in the Commission's rationale for upholding the Secretary's prevailing policy. In the instant cases, it seems clear from the record that the Secretary's owners-only enforcement policy was bottomed on the ABC v. Morton decision, and notwithstanding the publication of proposed rules covering independent contractors, I can perceive no change in that policy until such time as the rules are adopted and promulgated. As I interpret the Commission's decisions in Old Ben and Monterey, the Commission has permitted the Secretary to buy additional time within which

to implement his new rules for enforcement and no amount of semantical or rationalized arguments have persuaded me to the contrary, irrespective of the fact that I may disagree with the Commission's

rationale or am in accord with Commissioner Backley's well-reasoned dissents with respect to the independent contractor liability issue. Under the circumstances, respondent's suggestions that there are factual differences in the cases insofar as the respondent and the proposed contractor intervenors are concerned must be rejected.

In the course of the arguments at the hearing, and in arguments presented by the respondent in its motions objecting to any continuance of these dockets, filed October 22, 1979, respondent alluded to my prior ruling of April 24, 1979, in MSHA v. Morton Salt Company, DENV 79-161-PM, where I took the position that on the facts there presented, since the independent contractors were crying out to be recognized as party-respondents ready, willing, and able to assume their responsibilities and liabilities for violations and citations issued under the Act, MSHA's continued ignoring of this fact and its rigid enforcement policy defied logic, was basically unfair, and did little to promote and assure the safety of miners. I therefore dismissed MSHA's proposals to assess civil penalties against Morton Salt for three of the citations included in its proposals, and one remaining citation is still to be adjudicated as chargeable to Morton. Since my ruling dismissing the three citations was an interlocutory ruling rather than a final decision constituting my final disposition of the case, the Commission, on June 4, 1979, dismissed MSHA's petition for discretionary review of my order as premature, and in so doing noted that it expressed no view on whether the issues raised by MSHA were reviewable through the interlocutory review procedures provided for in Commission Rules 29 CFR 2700.52 and 61. Since my Morton Salt ruling was made prior to the Commission's decisions in Old Ben and Monterey, it would now appear that my ruling dismissing MSHA's proposal to assess Morton Salt for three violations may not stand Commission scrutiny in light of the developments in Old Ben and Monterey. Under the circumstances, my prior ruling of December 10, 1979, denying respondent's motion to be dismissed as a party-respondent in these proceedings is reaffirmed.

My prior rulings made in the December 10, 1979, order denying respondent's motion to permit its contractors and subcontractors to intervene and be substituted as parties are likewise reaffirmed. In Morton Salt, I rejected a similar motion by Morton to intervene its independent contractor on the ground that my interpretation of the then-prevailing Commission Interim Rules, 29 CFR 2700.10, limited participation by certain "parties" to hearings, and that the rules may not serve as a basis for transforming such "parties" into respondents not named by the Secretary as respondents subject to civil penalty assessments. The Commission's current Rules, 29 CFR 2700.4, confer party status on operators who are "named as parties or permitted to intervene," and while subsection (c) permits the filing of a motion to intervene at any time before a hearing on the merits, and requires the party to show its interest and establish that intervention will not unduly delay or prejudice the adjudication of the issues, I can find no authority in the rules to support a substitution of a party for purposes of civil penalty assessments

and respondent has cited none. Further, for these same reasons, respondent's motion of February 4, 1980, to permit contractor Smith-Miller Construction Company to intervene in Docket No. KENT 79-229, is likewise DENIED.

My prior ruling made in the December 10, 1979, order denying respondent's request to permit the identified contractors and subcontractors in these proceedings to pay the civil penalty assessments for which they claim responsibility and liability is reaffirmed. Further, respondent's assertion that Smith-Miller Construction Company has agreed to pay the penalties assessed in Docket No. KENT 79-229, insofar as it seeks an order from me accepting this agreement, is likewise rejected and DENIED. I can find no authority for summarily entering an order assessing civil penalties on the basis of a stipulation or agreement entered into by a party-respondent and a non-party contractor, nor can I find any authority for forcing MSHA to accept a unilateral offer to pay civil penalty assessments, Zeigler Coal Company, 7 IBMA 312 (1977), and it makes no difference that MSHA is unwilling to stipulate in these proceedings that the named independent contractors have each admitted responsibility for the citations and are willing to pay the penalties. With regard to this question, I find that the record as a whole supports the conclusion that the independent contractors are willing to assume responsibility for the penalties assessed in these proceedings (Tr. 28-29, 33; p. 4 of January 25, 1980, stipulation).

Fact of Violation

Respondent concedes that all of the conditions and practices described on the face of the citations issued in these proceedings constitute violations of the cited safety standards, and that the citations were properly issued (Tr. 28; January 25, 1980, stipulation, p. 2). Accordingly, I find that the fact of violation as to each of the citations issued in all of these cases has been established and they are all affirmed. Further, on the basis of my findings and conclusions concerning respondent's liability for these citations, I conclude that they were properly issued to the respondent and that the respondent is liable for any civil penalties assessed for the citations.

Size of Business and Affect of Civil Penalties Assessed on the Respondent's Ability to Continue in Business.

At the Evansville hearing, the parties stipulated that respondent is a wholly-owned subsidiary of Gulf Oil Company, and that the size of its mining business in 1978 was approximately 8 million tons of coal produced. The parties also stipulated that respondent's operations, including those at the Pleasant Hill Mine, affect commerce within the meaning of the Act. Under the circumstances, I conclude that for purposes of any civil penalty assessments levied in these proceedings respondent may be considered a large mine operator.

The parties stipulated that all of the citations issued in these proceedings were properly issued and that the proposed penalty assessment amounts are fair and reasonable under the circumstances known to have existed at the time the citations issued. Further, the parties agree and stipulate to the fact that MSHA's proposed penalties as reflected in its pleadings are appropriate to the size of respondent's business, and that

payment thereof will not seriously affect respondent's ability to continue in business. The stipulation and agreement on this issue is adopted as my finding and conclusion.

Good Faith Compliance

The parties stipulated that respondent, as well as the independent contractors, demonstrated good faith in causing correction and timely abatement of the conditions or practices cited by the inspectors in these proceedings. I accept and adopt this stipulation as my finding in these proceedings.

Gravity

The gravity of the conditions or practices described on the face of each of the citations issued in these proceedings, with the probability of the occurrence of the event against which each safety standard is directed, and the employee exposure to possible injury, is reflected as follows in the January 25, 1980, stipulations:

Docket No. BARB 79-307-P

| Citation No. | Standard | Probability | Exposure | Gravity of Injury |
|---|---|---|---|---|
| 399328 | 77.1710(i) | moderate | 2 employees | lost work days |

Docket No. BARB 79-285-P

| Citation No. | Standard | Probability | Exposure | Gravity of Injury |
|---|---|---|---|---|
| 399321 | 77.1605(a) | moderate | 1 employee | lost work days |
| 399322 | 77.208(d) | moderate | 4 or more | lost work days |
| 399323 | 77.1109(a) | moderate | 4 or more | lost work days |
| 399324 | 77.1710(e) | moderate | 1 employee | lost work days |
| 399325 | 77.410 | moderate | 4 or more | permanent disability |
| 399326 | 77.402 | moderate | 2 employees | lost work days |
| 399329 | 77.1109(c)(1) | substantial | 1 employee | lost work days |
| 399330 | 77.1102 | moderate | 1 employee | lost work days |
| 399335 | 77.1713(a) | moderate | 30 employees | lost work days |

Docket No. BARB 79-129-P

| Citation No. | Standard | Probability | Exposure | Gravity of Injury |
|---|---|---|---|---|
| 399333 | 77.400(a) | imminent | 1 employee | permanent disability or death |

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| | | | | |
|---|---|---|---|---|
| 399334 | 77.404(a) | imminent | 1 employee | permanent disability or death |

Docket No. BARB 79-180-P

| Citation No. | Standard | Probability | Exposure | Gravity of Injury |
|---|---|---|---|---|
| 0795019 | 77.1605(b) | moderate | 1 employee | lost work days |
| 0795020 | 77.205(b) | moderate | 1 employee | lost work days |
| 0795229 | 77.402 | moderate | 1 employee | lost work days |

Docket No. KENT 79-74-P

| Citation No. | Standard | Probability | Exposure | Gravity of Injury |
|---|---|---|---|---|
| 400843 | 77.404 | substantial | 1 employee | lost work days |

Docket No. KENT 79-269-P

| Citation No. | Standard | Probability | Exposure | Gravity of Injury |
|---|---|---|---|---|
| 0794248 | 77.404(a) | imminent | 1 employee | permanent disability |
| 0794249 | 77.404(a) | imminent | 1 employee | permanent disability |

Docket No. KENT 79-367

| Citation No. | Standard | Probability | Exposure | Gravity of Injury |
|---|---|---|---|---|
| 797717 | 77.204 | substantial | 1 employee | lost work days |
| 797718 | 77.205(b) | moderate | 1 employee | lost work days |

All of the citations issued in these dockets, with three exceptions, were issued pursuant to section 104(a) of the Act. The one citation issued in Docket No. KENT 79-74-P, and the two citations issued in Docket No. KENT 79-269-P, were imminent danger orders issued pursuant to section 107(a). The first one ordered the removal from service of a hand-held grinder which was connected to a power source and which was equipped with an overly-rated (RPM) buffing disc. The other two ordered the removal from service of a crane which had a hoisting brake which would not hold a load and a swinger which would not operate in reverse in a reasonable distance, and a second crane which had an inoperative swing lock brake. Aside from the fact that the equipment cited was removed from service, and in addition to the stipulated characterization of the probability of any injury resulting from these citations as "substantial" and "imminent," I have also weighed the fact that

the violations were cited in withdrawal orders, Zeigler Coal Company, 3 IBMA 366 (1974), and I find that these citations were serious.

In Docket No. PIKE 79-129-P, although both citations were issued pursuant to section 104(a) of the Act, for failure to provide a guard for a cut-off machine, and for using an over-sized blade on that machine, the conditions cited resulted in a fatality and the record reflects that MSHA "specially assessed" these citations in light of that fatality. Under the circumstances, I conclude and find that these two violations were very serious.

Docket No. BARB 79-307-P, concerns a citation for failure to provide seat belts for a dozer and a scraper. Although the citation reflects that the equipment was provided with roll protection, the standard requires the use of seat belts in a vehicle where there is a danger of overturning. Since the equipment was provided with roll protection, an inference may be made that the equipment cited could overturn and injure the operators. The use of seat belts would provide additional protection for the operators and I conclude that the failure to provide them as required resulted in a serious violation.

Docket No. KENT 79-99 concerns three citations for (1) failure to provide bathing, change, and toilet facilities at the mine, (2) failure to frame ground an electric hand-held cut-off machine, and (3) failure to frame ground an electric machine motor and ventilation fan. Failure to provide necessary toilet facilities could lead to hygiene and discomfort problems and I find that was a serious violation. Failure to properly ground electrical equipment could lead to shock and electrocution and I find these violations are serious.

Docket No. KENT 79-229 concerns two citations for failure to post warning signs at a storage tank and failure to provide fire extinguishers at a storage tank location. I find that in the event of a fire there would be no means to control it in view of the absence of fire extinguishers and the failure to post warning signs could lead to employees not being aware of fire hazards. I find these violations are serious.

Docket No. BARB 79-285-P concerns nine citations for (1) broken glass and fragged edges on a windshield of a mobile crane; (2) failure to secure oxygen and acetylene tanks in a safe manner; (3) lack of a fire extinguisher in a supply trailer; (4) an employee's failure to wear suitable footwear; (5) lack of back-up alarms on a dump truck and a back hoe; (6) failure to equip a saber saw and grinder with constant pressure hand or finger controls; (7) failure to provide fire extinguishers for a scraper and a service truck; (8) failure to provide a "No Smoking" sign on a service truck; and (9) failure by a qualified person to conduct and record daily onshift inspections.

Considering the circumstances described on the face of each of the aforesaid citations, and the stipulations of the parties

which reflect that

lost work days would result in the event of an injury caused by the conditions cited to one or more employees, I conclude that the conditions cited as violations were serious.

Docket No. KENT 79-367 concerns two citations for (1) failure to provide protection for an elevator opening in the tipple and in an opening at the wash box in the raw coal hopper, and (2) failure to maintain two tipple travelways where persons were required to travel and work clear of extraneous material and stumbling hazards. These standards are obviously intended to prevent injuries to employees from falling into unprotected openings and from stumbling or tripping in areas where they are required to work or travel, and coupled with the stipulations concerning employee exposure to such hazards, I conclude that the conditions cited as violations were serious.

Docket No. KENT 79-180 concerns three citations for (1) no parking brakes on a truck; (2) failure to keep a tunnel travelway clear of stumbling and tripping hazards; and (3) failure to equip two drills with constant pressure hand or finger controls. On the basis of the stipulations, and considering the conditions described on the face of the citations, I find these violations were serious.

Negligence

At the hearing, the parties stipulated that there was no gross negligence involved in any of the citations covered in these proceedings. Further, the subsequent stipulations filed January 25, 1980, on this issue reflect agreement by the parties that there was negligence involved in each of the citations presented in all of these dockets. Aside from the question as to the entity against whom negligence should be attributed and whether respondent should be held accountable for any negligence with respect to the conditions or practices cited as violations, I find and conclude that the record supports a finding that each of the citations resulted from a failure to exercise reasonable care to prevent the conditions or practices which were known or should have been known to exist at the time the citations issued, and that in such circumstances, the violations resulted from ordinary negligence.

With regard to the question of whether the negligence involved in the citations must be legally attributable solely to the independent contractors or whether it can also be attributable to the respondent mine owner on a theory of vicarious liability, I take note of the fact that at the time the citations were issued no coal was being produced at the mine in question (Tr. 30), and the parties stipulated and agreed that the contract (Exh. R-4) entered into between the respondent and its contractor, Ford, Bacon and Davis Utah, Inc., as well as its subcontractors with regard to the Pleasant Hill construction or mine site, reflects that each contractor had control over their respective employees as to health and safety, each had a continuing presence in the mine for a substantial period of time to perform the work that they were doing, each had complete

control over their

portion of the work, and the only control that the Pittsburg and Midway Coal Mining Company had was as to the results to be obtained. Further, the parties stipulated that Ford, Bacon and Davis Utah, Inc., is an independent contractor, that it is not the agent of respondent Pittsburgh and Midway Mining Company in performing the work, that the contractor had control of the work, and that the respondent mine owner only had an interest in the results to be obtained from that work (Tr. 15-16). Further, the January 25, 1980, stipulation reflects an agreement by the parties that Ford, Bacon and Davis Utah's subcontractors, namely, J & F Construction Company, Koester Contracting Corporation, Davco Corporation, Coal Rigging Contracting Corporation, and Cambron Electrical Company, may be considered for purposes of these proceedings, during the periods involved, as independent contractors. As such independent contractors they were engaged in clearly-defined areas of mine construction work prior to and in preparation for respondent's putting its Pleasant Hill Surface Mine into actual production of coal. Each of said independent contractors was engaged in a major work and exercised a continuous presence at the mine during the periods designated.

It is clear that while the absence of any negligence on the part of an operator does not absolve him from liability for a civil penalty, that fact may however be weighed in mitigation in determining the amount of any civil penalty assessed for the violation, Webster County Coal Corporation, 7 IBMA 264 (1977), and the cases cited therein. It follows therefore, that if the record establishes that a mine owner is not negligent for violations attributed to an independent contractor who has exclusive control and supervision over the work site, and no employees of the mine owner are exposed to any hazard caused by those violations, the mine owner should not be penalized for such negligence. One of the statutory criteria which must be considered under section 110(i) of the Act in the assessment of civil penalties for violations which have been established is the negligence of the operator. Accordingly, while I have found the respondent liable for the citations which were issued, and while respondent is liable for any civil penalty assessments resulting from those citations, I conclude that since the facts presented in these proceedings establish that any negligence which occurred as a result of the conditions or practices cited as violations resulted from a lack of reasonable care on the part of the identified contractors and subcontractors cited, the respondent should not bear the burden of any increased assessments based on that negligence. In addition, since the parties stipulated that the contractors were not the agents of the respondent, I further conclude that any theory of vicarious liability may not serve as a basis for increasing any assessments levied against the respondent.

History of Prior Violations

During the Evansville hearing, MSHA's counsel characterized the Pleasant Hill Mine site as a "construction site", that it is a new mine, and that these proceedings in fact constitute the first time that any violations have occurred at that mining

operation (Tr. 22). Counsel also indicated that in view of these circumstances no assessment points for prior history were levied against the respondent by MSHA's Assessment Office in its initial

evaluation of the citations, and the Assessment Office limited its consideration of prior history to that mine (Tr. 23). Although counsel indicated that the respondent has two other surface mines in operation within the Western Kentucky area which have generated what he characterized as a "significant number of violations," he also qualified this statement by indicating that the number is "not large" and that in each instance the violations involved only ordinary negligence (Tr. 24-25). MSHA has submitted no additional information concerning the overall prior history of the respondent separate and apart from the information relating to its Pleasant Hills mining operation. I accept counsel's assertion that it is not large, and based on the stipulated facts here presented I conclude and find that for purposes of these proceedings, respondent has no prior history of violations.

Respondent's suggestions that the violations in these proceedings should not be charged against its record and should not become a part of its citation record for purposes of future proceedings is rejected. In effect, respondent is seeking a declaratory judgment from me that in any future proceedings, another Commission judge may not consider the instant violations as part of its track record. I find no authority for such a decision by me and it seems clear that prior violations which have been paid, compromised, settled, or finally ordered paid, and even those paid under protest, may be considered as part of a mine operator's prior history, Church of Latter Day Saints, 2 IBMA 285 (1973); Peggs Run Coal Company, 5 IBMA 144 (1975). Further, it is clear that the identified contractors are not respondents in these cases, and the fact that they are willing to include the violations as part of their history is immaterial. Of course, I see nothing to preclude the respondent from arguing in any future proceedings that the judge may consider and weigh the effect of those violations on any civil penalty amounts fixed against a mine owner.

Penalty Assessments

It is clear that in litigated civil penalty proceedings, the determination of appropriate civil penalty assessments for proven violations is made on a de novo basis by the presiding judge and he is not bound by any assessment method of computation utilized by MSHA's Assessment Office, Boggs Construction Company, 6 IBMA 145 (1976); Associated Drilling Company, 6 IBMA 217 (1976); Gay Coal Company, 7 IBMA 245 (1977); MSHA v. Consolidated Coal Company, VINC 77-132-P, IBMA 78-3, decided by the Commission on January 22, 1980.

In the instant proceedings, the initial civil penalty assessments which appear as part of the petitioner's initial pleadings and civil penalty proposals in the form of "assessment worksheets" as exhibits to the proposals, reflect proposed penalty amounts derived from either the application of "points" assessed for each of the statutory criteria set out in section 110(i) of the Act, or from a "special assessment" made pursuant to Part 100, Title 30, Code of Federal Regulations. The record

reflects that no penalty assessment points were attributable to the respondent's prior history of violations and MSHA has admitted that this is the case. However, with regard

to the question of negligence, a review of the proposed penalty assessments made by MSHA reflects that negligence "points" were assessed against the respondent for some but not all of the citations in question and this fact obviously resulted in an increase in the proposed penalty amounts. Since I have concluded that the respondent was not negligent for any of the citations, the question presented is whether I may consider this as mitigating a decrease in the proposed amounts where MSHA considered the factor of negligence in determining the proposed penalties.

The parties have stipulated that any civil penalties approximating those proposed in these proceedings will not adversely affect its ability to remain in business, that the proposed penalties are appropriate to the size of respondent's business, and that the proposed assessments are fair and reasonable amounts under the circumstances known to have existed at the time the citations were issued. MSHA has recommended no penalties as part of its posthearing arguments or stipulations, and apparently rests on the initial evaluations made by its Assessment Office, and respondent makes no further arguments that it is in entitled to any penalty reductions for lack of negligence on its part. However, I believe that section 110(i) mandates consideration of the element of negligence on a case-by-case basis, and if the record supports a reduction in penalties, basic fairness dictates that respondent is entitled to it even though he has not specifically pleaded for a reduction. Further, as I view the stipulations with respect to the reasonableness of the proposed assessments, they were obviously made on the basis of negligence attributable to the respondent and as such, I conclude that I am not bound by them, particularly in light of my finding that the absence of any negligence attributable to the respondent may be considered in mitigation of the penalties which I may assess. Accordingly, as to each citation where no negligence points were assessed against the respondent, except for those "specially assessed", I find them to be reasonable and I adopt them as the penalties assessed by me in these proceedings. With regard to those citations which took into account any negligence by the respondent, including those "specially assessed", I find that reductions are warranted and they are reflected in the assessments levied me in these proceedings. I might add that had the named contractors been before me as parties, absent any mitigating circumstances, or the presence of any aggravating factors, the initial proposed assessments may or may not have been disturbed.

On the basis of the foregoing findings and conclusions made in these proceedings, civil penalties are assessed in each of these dockets as follows:

Docket No. KENT 79-180

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 0795019 | 4/16/79 | 77.1605(b) | $50 |
| 0795020 | 4/16/79 | 77.205(b) | 45 |

| | | | |
|---|---|---|---|
| 0795229 | 4/16/79 | 77.402 | 45 |

Docket No. KENT 79-367

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 0797717 | 8/1/79 | 77.204 | $80 |
| 0797718 | 8/1/79 | 77.205(b) | 50 |

Docket No. KENT 79-74

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 400843 | 12/21/78 | 77.404 | $175 |

Docket No. KENT 79-269

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 0794248 | 4/11/79 | 77.404(a) | $205 |
| 0794249 | 4/11/79 | 77.404(a) | 200 |

Docket No. KENT 79-129-P

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 399333 | 9/21/78 | 77.400(a) | $1,500 |
| 399334 | 9/21/78 | 77.404(a) | 350 |

Docket No. KENT 79-307-P

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 399328 | 9/19/78 | 77.1710(i) | $20 |

Docket No. BARB 79-285-P

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 399321 | 9/18/78 | 77.15605(a) | $25 |
| 399322 | 9/18/78 | 77.208(d) | 44 |
| 399323 | 9/18/78 | 77.1109(a) | 25 |
| 399324 | 9/18/78 | 77.1710(e) | 30 |
| 399325 | 9/18/78 | 77.410 | 60 |
| 399326 | 9/18/78 | 77.402 | 25 |
| 399329 | 9/18/78 | 77.1109(c)(1) | 50 |
| 399330 | 9/18/78 | 77.1102 | 44 |
| 399335 | 9/26/78 | 77.1713(a) | 25 |

Docket No. KENT 79-99

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 399327 | 9/18/78 | 71.400 | $15 |
| 399332 | 9/21/78 | 77.701 | 35 |
| 400844 | 12/21/78 | 77.701 | 45 |

Docket No. KENT 79-229

| Citation No. | Date | 30 CFR Section | Assessment |
|---|---|---|---|
| 794253 | 5/15/79 | 77.1102 | $45 |
| 794254 | 5/15/79 | 77.1109(e)(1) | 30 |

ORDER

The respondent IS ORDERED to pay the penalties assessed in these proceedings in the amounts shown above, totaling $3,218 within thirty (30) days of the date of these decisions.

George A. Koutras
Administrative Law Judge