

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710**

August 19, 2026

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. LAKE 2022-0017
	:	
PRAIRIE STATE GENERATING	:	
COMPANY, LLC	:	

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

DECISION

BY: Jordan and Baker, Commissioners

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act” or “Act”). It involves a single citation issued by the Mine Safety and Health Administration (“MSHA”) to Prairie State Generating Company, LLC (“Prairie State”). The citation alleges a significant and substantial (“S&S”)¹ violation of 30 C.F.R. § 75.517 for the operator’s failure to adequately insulate and fully protect a trailing cable attached to the continuous miner.²

Prairie State did not contest the fact of violation but instead challenged MSHA’s S&S designation. After a hearing on the merits, a Commission Administrative Law Judge issued a decision dated March 8, 2024, affirming the S&S designation. 46 FMSHRC 147 (Mar. 2024) (ALJ).

¹ The S&S terminology is taken from section 104(d)(1) of the Act, 30 U.S.C. § 814(d)(1), which distinguishes as more serious any violation that “could significantly and substantially contribute to the cause and effect of a ... mine safety or health hazard.”

² Specifically, 30 C.F.R. § 75.517 states: “Power wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected.”

On April 8, 2024, Prairie State filed a petition for discretionary review challenging the Judge’s S&S finding, which we granted on April 11, 2024.³ PDR at 6-8; PS Br. at 15-18.

For the reasons discussed below, we vacate the Judge’s decision and remand the case for a new S&S analysis.

I.

FACTS

The violation at issue involves a power cable running from a power center to a continuous miner. When a continuous miner cuts a coal seam, it carries a coiled length of cable called the “cut loop,” which allows the machine to move into the cut while minimizing the amount of loose trailing cable. The cable has three shielded phase conductors that are insulated with a durable cover. This insulation is covered with braided copper shielding. The cable is bent, coiled and stretched during normal mining operations, which can subject it to damage. The continuous miner draws 995 volts, and the insulation is rated to carry 2,000 volts.

The issuing inspector found a small hole in the cable’s insulation, approximately 1/4 inches to 5/16 inches long, which had penetrated the outer jacket above one of the ground wires. Additionally, there were some minor cracks on the surface of the inner insulation, and “gaps” in the braided copper shielding. The inspector’s observations indicated that the phase conductor insulation and the shielding were both compromised. Both the inspector and a witness for the operator testified that miners will sometimes use their hands to reposition the cable when the continuous miner is moved. 46 FMSHRC at 157.

The inspector issued a citation for failure to adequately protect the cable, and designated the violation as S&S.

II.

DISPOSITION

A. The Judge conducted his S&S analysis under the Commission’s previous S&S framework.

The Judge applied the S&S standard as articulated in the *Newtown/Peabody* line of cases – the Commission’s S&S standard applicable at the time the Judge issued his decision. As the Judge explained:

A violation is properly designated as S&S if, “based upon the particular facts surrounding the violation, there exists a

³ The operator also challenges the Judge’s decision on substantial evidence grounds and alleges violations of the Administrative Procedure Act and the Fifth Amendment to the Constitution. However, in light of our remand order here, we need not reach these arguments.

reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature.” *Mathies Coal Co.*, 6 FMSHRC 1, 3 (Jan. 1984) (citing *Cement Div., Nat’l Gypsum Co.*, 3 FMSHRC 822, 825 (Apr. 1981)). The four elements required for an S&S finding are expressed as follows:

‘(1) [T]he underlying violation of a mandatory safety standard; (2) the violation was reasonably likely to cause the occurrence of the discrete safety hazard against which the standard is directed; (3) the occurrence of the hazard would be reasonably likely to cause an injury; and (4) there would be a reasonable likelihood that the injury in question would be of a reasonably serious nature.’

Peabody Midwest Mining, LLC, 42 FMSHRC 379, 383 (June 2020) (integrating the refinement of the second *Mathies* step in *Newtown Energy, Inc.*, 38 FMSHRC 2033, 2037 (Aug. 2016)).

An S&S determination must be based on the assumed continuation of normal mining operations. *See Consol Pa. Coal Co.*, 43 FMSHRC 145, 148 (Apr. 2021) (citing *U.S. Steel Mining Co.*, 6 FMSHRC 1573, 1574 (July 1984); *Gatliff Coal Co.*, 14 FMSHRC 1982, 1986 (Dec. 1992)) (“A determination of ‘significant and substantial’ must be based on the facts existing at the time of issuance and assuming continued normal mining operations, absent any assumption of abatement or inference that the violative condition will cease.”).

46 FMSHRC at 155.

Upon application of the “refined” *Mathies* analysis under *Newtown/Peabody*, the Judge found that the Secretary had met his burden of proof and affirmed the S&S finding. Specifically, the Judge concluded that the violation was S&S based on factual findings that: a violation had occurred (*id.* at 156); the violation was reasonably likely to cause the occurrence of the safety hazard at which the standard was directed, because miners were reasonably likely to be exposed to an energized, damaged cable (*id.* at 158-59); exposure to an energized, damaged cable was reasonably likely to result in injury through contact with stray currents (*id.* at 159); and such an injury was likely to be serious (*id.* at 169).

B. The Commission’s new S&S framework may require different factual findings.

While this case was pending before the Commission, we issued our decision in *Consol Pennsylvania Coal Co.*, overruling *Newtown/Peabody*. 47 FMSHRC 793 (Sept. 2025). Finding our current S&S test an “impediment to . . . applying the law,” we rejected the *Peabody* S&S test on the ground that it “contradicts the plain language of section 104(d)(1) of the Mine Act.” *Id.* at 816, 822. The Commission found the *Newtown/Peabody* formulation to be inconsistent with the

Mine Act’s definition of S&S, which focuses on violations that *could* significantly and substantially contribute to the cause and effect of a hazard. *Id.* at 817; 30 U.S.C. § 814(d)(1). We concluded that requiring the Secretary to demonstrate that the violation “was reasonably likely to cause the occurrence” of a hazard deviates in impermissible ways from the language of section 104(d)(1), which only requires a “contribut[ion].” 47 FMSHRC at 816-17.

Instead, we determined that consistent with the statutory language, the proper inquiry is whether the violation could have significantly and substantially contributed to the cause and effect of a hazard. *Id.* at 826. We explained that “in order to affirm an S&S designation, the plain language of section 104(d)(1) dictates that the Secretary must demonstrate that the violation to which miners are exposed *could* make an S&S contribution to a mine safety or health hazard.” *Id.* at 823 (emphasis in the original); *see also id.* at 823 n.26 (“[T]he Secretary must demonstrate that miners could be exposed to the hazard during continued mining operations.”); *Canyon Fuel*, 48 FMSHRC 2, 14 (Jan. 2026) (citations omitted) (“A violation is S&S when a miner is exposed, or would be exposed *in the normal course of mining*, to a violation that *could* significantly and substantially contribute to a mine safety or health hazard.”) (emphasis added).

As noted above, the Judge reviewed the record and made factual findings in the context of the Commission’s prior S&S framework, which was in place at the time. For example, his S&S determination was based in part on a factual finding that “the Secretary met her burden as to the reasonable likelihood that a miner could contact the damaged portion of the cable while energized.” 46 FMSHRC at 159.

Accordingly, we vacate the Judge’s decision in this case and remand this proceeding for the Judge to review the record in light of the Commission’s latest S&S framework and determine, in the first instance, whether the violation is significant and substantial under the *Consol* S&S framework.

III.

CONCLUSION

Accordingly, we vacate the judge's decision and remand this proceeding for consideration of this matter under the new *Consol* S&S analysis.



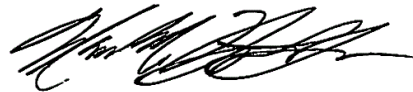
Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

Rajkovich, concurring:

As previously laid out in my separate opinions in *Canyon Fuel* and *W.G. Yates & Sons*,¹ I would not adopt the S&S framework in *Consol Pennsylvania Coal Co.*, 47 FMSHRC 793 (Sept. 2025). However, I acknowledge that it was adopted by a majority of Commissioners after the Judge issued his decision in this matter. Accordingly, I agree that remanding this matter for the Judge to review the record and make further factual findings consistent with that new framework is appropriate.



Marco M. Rajkovich, Jr., Chair

¹ *Canyon Fuel Co., LLC*, 48 FMSHRC 2, 22-23 (Jan. 2026) (Chair Rajkovich, concurring in part); *W.G. Yates & Sons Constr. Co.*, 48 FMSHRC 198, 205 (May 2026) (Chair Rajkovich, concurring).

Distribution:

Jason W. Hardin, Esq.,
Artemis D. Vamianakis, Esq.
FABIAN VANCOTT
215 S. State Street, Suite 1200
Salt Lake City, UT 84111
jhardin@fabianvancott.com
avamianakis@fabianvancott.com

Edward V. Hartman, Esq.
Arsalan A. Nayani
Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn
Rm. 844, Chicago, IL 60604
hartman.edward.v@dol.gov
nayani.arsalan.a@dol.gov

Thomas A. Paige, Esq.
Marcus Andrews, Esq.
Jennifer A. Ledig, Esq.
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Paige.Thomas.a@dol.gov
Andrews.marcus.w@dol.gov
ledig.jennifer.a@dol.gov

Melanie Garriss
US Department of Labor/MSHA
Office of Assessments, Room N3454
200 Constitution Ave NW
Washington, DC 20210
Garris.Melanie@dol.gov
Peterson.erik@dol.gov

Administrative Law Judge Michael G. Young
Federal Mine Safety and Health Review Commission
Office of the Administrative Law Judges
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
myoung@fmshrc.gov

Acting Chief Judge David P. Simonton
Federal Mine Safety and Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
dsimonton@fmshrc.gov