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SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Complainant, v. DOE RUN CO, Respondent.	CIVIL PENALTY PROCEEDING Docket No. CENT 2025-0167 A.C. No.: 23-01800-614185 Mine: Viburnum #35 (Casteel Mine)

DECISION ON MOTION FOR SUMMARY DECISION

Before: Judge Simonton

This case is before me upon the Secretary's petition for assessment of civil penalty issued in accordance with the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (Mine Act) and 29 C.F.R. § 2700.20 et seq. Chief Administrative Law Judge Glynn F. Voisin assigned me this case on July 7, 2025. In dispute is one citation issued under section 104(a) of the Mine Act to Doe Run Co. ("Respondent" or "Doe Run"), as owner and operator of the Viburnum #35 (Casteel Mine) in Bixby, Missouri.

I. STATEMENT OF THE CASE

The Secretary issued Doe Run Citation No. 9767916 under section 104(a) of the Mine Act for an alleged violation of health and safety standards. Specifically, Citation No. 9767916 alleges a violation of 30 C.F.R. § 57.13015(a) for failing to have a 250-gallon pressure vessel inspected by an inspector holding a valid national board commission certification with a proposed penalty of $151.00.

I set this matter to be heard on November 13–14, 2025. On September 10, 2025, the Secretary filed a Motion for Summary Decision. Thereafter, Doe Run filed an Unopposed Motion for Extension of Time to File Response to Secretary's Motion for Summary Decision on September 12, 2025. Finding good cause, I granted Doe Run's motion and set the due date for its response on October 3, 2025.

On October 3, 2025, Doe Run filed its response to the Secretary's Motion for Summary Decision. However, due to the six-week federal government shutdown, the Secretary could not file its reply brief and the hearing set for November 13–14, 2025, could not be held. During the

period of the shutdown, Doe Run filed a motion to postpone the hearing on October 21, 2025. Upon conclusion of the government shutdown, I granted Doe Run's Motion to Postpone Hearing on November 14, 2025, with a new hearing to be set in the future. Thereafter, on November 20, 2025, the Secretary filed its Reply in Further Support of Summary Decision.[1]

II. SUMMARY DECISION STANDARD

Commission Procedural Rule 67 sets forth the following grounds for granting summary decision:

> A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows:
>
> (1) That there is no genuine issue as to any material fact; and
>
> (2) That the moving party is entitled to summary decision as a matter of law.

29 C.F.R. § 2700.67(b). The Commission has long recognized that "'[s]ummary decision is an extraordinary procedure,"' and has analogized it to Rule 56 of the Federal Rules of Civil Procedure, under which "the Supreme Court has indicated that summary judgment is authorized only 'upon proper showings of the lack of a genuine, triable issue of material fact."' *Hanson Aggregates*, 29 FMSHRC 4, 9 (Jan. 2007) (quoting *Energy West Mining Co.*, 16 FMSHRC 1414, 1419 (July 1994)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

"Material facts" are those that "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Pursuant to Commission Procedural Rule 67, "Material facts identified as not in issue by the moving party shall be deemed admitted for the purposes of the motion unless controverted by the statement in opposition." 29 C.F.R. § 2700.67(d). The court must evaluate the evidence "in the light most favorable to . . . the party opposing the motion." *Hanson Aggregates*, 29 FMSHRC at 9. Any inferences drawn "from the underlying facts contained in [the] materials [supporting the motion] must be viewed in the light most favorable to the party opposing the motion." *Id.*

A. No Dispute of Material Fact

The Secretary argues that Summary Decision is appropriate in this matter because there are no disputes of material fact. Sec'y Memorandum in Support at 1–2. Specifically, the Secretary argues it is undisputed that Doe Run operated a pressure vessel that was not inspected which is a plain and clear violation of 30 C.F.R. § 57.13015(a). *Id.* at 3, 8–10; Sec'y Reply at 1.

[1] The Secretary's exhibits, Doe Run's exhibits, the Secretary's Memorandum in Support of Summary Decision, Doe Run's Memorandum of Points of Authorities in Response to Motion for Summary Decision, and the Secretary's Reply in Further Support of Summary Decision are abbreviated, respectively, as: "Ex. S–#," "Ex. R–#," "Sec'y Memorandum in Support" "Resp't Response," and "Sec'y Reply."

Instead, "[t]he parties only dispute what version of the inspection requirements apply, a pure legal issue." Sec'y Memorandum in Support at 1.

In response, Doe Run argues that Summary Decision is inappropriate in this matter because "there are material facts intertwined with the legal issues that remain in dispute." Resp't Response at 3–4. The material facts that Doe Run identifies are:

> 1. Whether, given the absence of previous notice by inspector activity and MSHA policy as well as the National Board exemption, whether Doe Run received adequate notice of the applicability of the standard.
>
> 2. Whether any MSHA inspector had ever previously indicated that the tank on the drill was subject to inspection by a certified inspector of the National Board of Boiler and Pressure Vessels.
>
> 3. Whether the 1979 Boiler Inspection Rules clearly apply to the tank on the drill at issue.
>
> 4. What is the effect of [the]subsequent document issued in 2004, NB-132 (Exhibit 3), that identified certain exemptions to the National Board's inspection requirement.
>
> 5. Whether Missouri law concerning pressure vessels applies to the tank on the drill at issue.

Id. at 3.

After reviewing the entirety of the parties' filings, neither party disputes the factual circumstances underlying Citation No. 9767916, namely that Doe Run's 250-gallon pressure vessel had not been previously inspected. *Id.* at 1–2, 5; Resp't Amended Pre-Hr'g Statement at 1–3; Sec'y Memorandum in Support at 3, 8–9, 10; Sec'y Reply at 1.

The only arguable fact that Doe Run asserts is intertwined with a relevant legal issue is "[w]hether any MSHA inspector had ever previously indicated that the tank on the drill was subject to inspection by a certified inspector of the National Board of Boiler and Pressure Vessels." Resp't Response at 4. However, even under the assumption that an MSHA Inspector had never previously indicated that the cited tank was subject to inspection, this fact is not material as, regardless of what information may be presented from it, it is insufficient to support the vacating of a citation. *See Cactus Canyon Quarries, Inc. v. Sec'y of Lab*., 953 F.3d 790, 793 (D.C. Cir. 2020) (rejecting operator's argument that an inspector was not allowed to cite equipment that had never been cited for decades because the "Secretary 'cannot be estopped from enforcing its regulations simply because it did not previously cite the mine operator'"); *see also Mainline Rock & Ballast, Inc. v. Sec'y of Lab.*, 693 F.3d 1181, 1187 (10th Cir. 2012) (rejecting an operator's lack of adequate notice argument because "'those who deal with the Government are expected to know the law and may not rely on the conduct of government agents

contrary to the law'") (citing *Emery Mining Corp. v. Sec'y of Labor*, 744 F.2d 1411, 1416–1417 (10th Cir. 1984)).

Accordingly, in reviewing each of Doe Run's asserted issues, I determine that each question focuses solely on legal issues regarding regulatory interpretation, lack of adequate notice, and the applicability of state law rather than disputes of material fact. Therefore, I conclude that Summary Decision is appropriate in resolving this matter as the questions of law at issue may properly be decided based on the record before me.

III. STATEMENT OF FACTS

Doe Run operates the Viburnum #35 ("Casteel Mine") underground mine in Bixby, Missouri, which produces lead, copper and zinc. Sec'y Memorandum in Support at 2; Resp't Response at 1; Resp't Amended Pre-Hr'g Statement at 1. The mining process in the Casteel Mine involves using drills to create holes that are then loaded with explosives and detonated. Resp't Response at 1; Resp't Amended Pre-Hr'g Statement at 1. These drills are connected to a 250-gallon water tank that is under 125 psi of pressure. *Id.* The water tank sends drilling water up the drill steel to the bit head, where it cools the bit, clears cuttings from the borehole, and provides dust suppression. Resp't Response at 1–2; Resp't Amended Pre-Hr'g Statement at 1.

On August 21, 2024, MSHA Inspector James Santhuff traveled to the Casteel Mine to perform a standard quarterly inspection of the mine and its equipment. Sec'y Memorandum in Support at 3; Resp't Response at 2; Resp't Amended Pre-Hr'g Statement at 1–2. During Santhuff's inspection, he noticed a 250-gallon vessel mounted to the Tamrock Solo SN# 0106 drill. Sec'y Memorandum in Support at 3; Ex. S–A. Based on Santhuff's training and experience, he recognized the vessel as an unfired pressure vessel because it is a receiver tank that is pressurized by a motor. *Id.* Santhuff then inspected the 250-gallon vessel, finding it to be in good condition, and then spoke to Maintenance Manager Clay McNeil, inquiring if the vessel had been inspected by a certified National Board of Boiler Pressure Vessel inspector ("certified inspector"). Sec'y Memorandum in Support at 3; Ex. S–A; Resp't Response at 2; Resp't Amended Pre-Hr'g Statement at 1–2. McNeil responded that the pressure vessel had been in use at the mine for approximately 20 years and it had not been inspected by a certified inspector because Doe Run believed it was exempt from inspection. *Id.* Accordingly, Santhuff issued Citation No. 9767916 to Doe Run on August 21, 2024, in which he wrote the following:

> The 250-gallon pressure vessel located on the Tamrock Solo SN# 0106 had not been inspected by an inspector holding a valid national board commission certification. The pressure vessel relief valve and tank appeared to be in good condition. The pressure vessel was available for use to miners at the time of the inspection. This condition exposes a miner to injuries related to the pressure vessel failing.

Ex. S–A. MSHA Inspector Santhuff also assessed the gravity of the violation as "unlikely" to result in "lost workdays or restricted duty" to one person and determined that Doe Run exhibited a "low" level of negligence. *Id.*

After the issuance of Citation No. 9767916, Maintenance Manager McNeil continued to discuss the citation with Santhuff and was adamant that the unfired pressure vessel was exempt from inspection. Sec'y Memorandum in Support at 3; Ex. S–A; Resp't Response at 2; Resp't Amended Pre-Hr'g Statement at 2. McNeil then, in an attempt to have the citation vacated, called Independent Inspector Tim Swanson from ARISE–a private inspection organization–to come to the Casteel Mine. Resp't Response at 2; Resp't Amended Pre-Hr'g Statement at 2. Once Swanson arrived, he informed Santhuff that, in his opinion, the cited unfired pressure vessel was exempt from inspection. *Id.* However, after contacting an official with the State of Missouri Division of Fire Safety, Santhuff remained adamant that the cited vessel was not exempt from inspection. *Id.* Santhuff then issued the abatement date for Citation No. 9767916 for the following day, August 22, 2024. Sec'y Memorandum in Support at 3; Ex. S–A. However, on August 27, 2025, Santhuff extended the abatement date to September 6, 2024, as Doe Run was in the process of scheduling an inspection of the pressure vessel with ARISE. *Id.* The pressure vessel was then first inspected on September 6, 2024, by Independent Inspector Swanson. Sec'y Memorandum in Support at 3; Ex. S–A; Resp't Response at 2; Resp't Amended Pre-Hr'g Statement at 2.

IV. ISSUES

The Secretary argues that I should affirm Citation No. 9767916 as issued along with her proposed penalty of $151.00. Sec'y Memorandum in Support at 1; Sec'y Reply at 1. Doe Run contests the penalty and argues that the citation should be vacated. Resp't Response at 1. Neither party disputes the factual circumstances of Citation No. 9767916. Resp't Response at 1–2, 5; Resp't Amended Pre-Hr'g Statement at 1–3; Sec'y Memorandum in Support at 3, 8–9, 10; Sec'y Reply at 1.

Accordingly, I determine that the following issues are before me: (1) whether the issuance of the National Board's 2004 NB-132 document alters the applicability of section 57.13015(a); (2) whether Doe Run had adequate notice of the applicability of section 57.13015(a) to the cited tank at issue; (3) whether Citation No. 9767916's gravity determinations are properly designated; (4) whether Citation No. 9767916's negligence is properly designated; and (5) whether the Secretary's proposed penalty for this alleged violation is appropriate.

For the reasons set forth below, Citation No. 9767916 is **AFFIRMED** as issued.

V. PRINCIPLES OF LAW

To comport with due process, laws must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [the person] may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Lanham Coal Co.*, 13 FMSHRC 1341, 1343 (Sept. 1991). Under Commission precedent, if the language of a regulation provides clear and unambiguous notice of its coverage and requirements, no further notice is necessary. *Bluestone Coal. Co.*, 19 FMSHRC 1025, 1029 (June 1997) (holding that when a regulatory provision is clear and unambiguous, then the regulation provides adequate notice); *Nolichuckey Sand Co.*, 22 FMSHRC 1057, 1061 (Sept. 2000) (holding that if the regulation is unambiguous, the regulation's clear meaning is controlling and it "'follows that the standard provided the

operator with adequate notice of its requirements'") (citing *LaFarge Constr. Materials,* 20 FMSHRC 1140, 1144 (Oct. 1998)).

Many Mine Act health and safety standards are "simple and brief in order to be broadly adaptable to myriad circumstances." *Kerr-McGee Corp.*, 3 FMSHRC 2496, 2497 (Nov. 1981); *see also Alabama By-Products Corp.*, 4 FMSHRC 2128, 2130 (Dec. 1982). Thus, when a regulation does not provide unambiguous notice of its coverage, the appropriate test for notice of an ambiguous regulation is "whether a reasonably prudent person familiar with the mining industry and the protective purposes of the standard would have recognized the specific prohibition or requirement of the standard." *Ideal Cement Co.*, 12 FMSHRC 2409, 2416 (Nov. 1990). In determining whether a party had adequate notice of regulatory requirements, a wide variety of factors are considered, such as "the text of a regulation, its placement in the overall regulatory scheme, its regulatory history, the consistency of the agency's enforcement, and whether MSHA has published notices informing the regulated community with ascertainable certainty of its interpretation of the standard in question." *Lodestar Energy, Inc.*, 24 FMSHRC 689, 694–85 (July 2002).

VI. ANALYSIS AND CONCLUSIONS OF LAW

A. What Does 30 C.F.R. § 57.13015(a) Incorporate by Reference?

Doe Run was cited for a violation of 30 C.F.R. § 57.13015(a), which requires, in relevant part, that:

> Compressed-air receivers and other unfired pressure vessels shall be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a Manual for Boiler and Pressure Vessel Inspectors, 1979. This code is incorporated by reference and made a part of this standard.

30 C.F.R. § 57.13015(a).

Doe Run argues that "a citation should not have been issued" because the National Board Inspection Code's ("NBIC") 2004 NB-132 document exempted the cited vessel and therefore altered the applicability of the 1979 version of "a Manual for Boiler and Pressure Vessel Inspectors" referenced in section 57.13015(a). Resp't Response at 3; Ex. R–3. Specifically,

> Exemption #3 in Section E provides that pressure vessels operated completely full of water or a liquid of comparable hazard level are exempt, provided the vessel's contents do not exceed 140°F in temperature or 200 psi[] in pressure. The water tanks installed on the drill meet these conditions, as they are routinely filled with water and do not exceed either the temperatures or pressure threshold.

Id. Accordingly, Doe Run argues "that the drill pressure vessel in question qualifies for exemption under current National Board guidelines." Resp't Response at 3.

In response, the Secretary argues that section 57.13015(a) "explicitly incorporates the 1979 Code, and . . . [t]hus, as a matter of law, the 1979 Code is the governing code and the only code relevant to citations issued for violations of 30 C.F.R. § 57.13015." Sec'y Memorandum in Support at 6. Additionally, the Secretary argues that allowing the issuance of the National Board's 2004 NB-132 document to alter the scope of section 57.13015(a) violates section 101(a)(9) of the Mine Act as it would "reduce the protection afforded miners by an existing mandatory health or safety standard." *Id.* at 7.

In reviewing the parties' filings and supporting documentation in the light most favorable to Doe Run, I find Doe Run's argument unpersuasive for the following reasons.

1. Dynamic Incorporation Violates the Administrative Procedure Act and 1 C.F.R. § 51.11(a)

Doe Run's argument–that the applicability of section 57.13015(a) is altered by the issuance of the National Board's 2004 NB-132 document–suggests a dynamic incorporation in section 57.13015(a) in which "the applicable chapters of the [1979 NBIC], a Manual for Boiler and Pressure Vessel Inspectors" would automatically change whenever the National Board issues subsequent recommendations affecting boiler and pressure vessels. However, in the context of promulgated regulations, such dynamic incorporation is impermissible as it violates the notice and comment requirements of the Administrative Procedure Act ("APA"). *City of Idaho Falls v. FERC*, 629 F.3d 222, 227–28 (D.C. Cir. 2011) (holding that FERC violated the APA by attempting to adopt, without additional notice and comment, updated Forest Service fee schedules, a previous version of which was incorporated by reference in its regulations); *see also BHP Navajo Coal Co.*, 2015 WL 9684710, *8 (Dec. 2015) (ALJ) (rejecting operator's argument that the language "'in effect at the time of the installation'" means that section 77.516 automatically updates whenever a new edition of the National Electric Code is published because "[s]uch dynamic incorporation . . . violate[s] the notice and comment requirements of the Administrative Procedure Act").

Additionally, Doe Run's position would require that I ignore the requirements of 1 C.F.R. § 51.11(a).[2] As Judge Bulluck correctly noted in *BHP Navajo Coal Co.*, dynamic incorporation goes against the "unambiguous instructions to agencies" in 1 C.F.R. § 51.11(a) regarding how to change a publication that is approved for incorporation by reference. *BHP Navajo Coal Co.*, 2015 WL 9684710 at *8. Although not binding, I find Judge Bulluck's reasoning persuasive.

[2] 1 C.F.R § 51.11(a) provides that "[a]n agency that seeks approval for a change to a publication that is approved for incorporation by reference must–(1) Publish notice of the change in the Federal Register and amend the Code of Federal Regulations; (2) Ensure that a copy of the amendment or revision is on file at the Office of the Federal Register; and (3) Notify the Director of the Federal Register in writing that the change is being made."

2. Doe Run's Argument Fails Under Reference Canon Interpretation

In the analogous context of interpreting federal statutes, Doe Run's argument equates to an interpretive tool commonly known as reference canon interpretation. The Supreme Court in *Brown v. United States* explained that reference canon interpretation "provides that a statutory reference to a '*general* subject' incorporates 'the law on that subject as it exists whenever a question under the statute arises.' *Brown v. United States*, 602 U.S. 101, 115–16 (2024) (citing *Jam v. Int'l Fin. Corp.,* 586 U.S. 199, 206 (2019)). However, "a reference 'to another statute by specific title or section number'—such as ACCA's reference to 21 U.S.C. § 802—'in effect cuts and pastes the referenced statute *as it existed when the referring statute was enacted*, *without any subsequent amendments*.'" *Id.* (emphasis added). For example, the Court in *Brown*–in interpreting statutory language–concluded that "it is hard to see the phrase 'as defined in section 102 of the Controlled Substances Act' as anything but a specific reference." *Brown v. United States*, 602 U.S. 101, 115–16 (2024); *cf. Jam v. Int'l Fin. Corp.,* 586 U.S. 199, 209–211 (2019) (holding that the language "'same immunity from suit . . . as is enjoyed by foreign governments'" is not a specific reference to a provision of another statute, but instead a general reference to an external body of potentially evolving law).

In applying the Supreme Court's reasoning, I similarly find it hard to see section 57.13015(a)'s phrase "the applicable chapters of the [NBIC's], a Manual for Boiler and Pressure Vessel Inspectors, 1979" as anything but a specific reference as it explicitly states the 1979 version. 30 C.F.R. § 57.13015(a).

3. 1979 Version is Consistently Maintained as Incorporated by Reference

The explicit mention of "1979" in section 57.13015(a) has been consistently maintained as being incorporated by reference by the Federal Register since its enactment.[3] In 1980 and, again, in 1981, the Director of the Federal Register approved the incorporation by reference of the "National Board Inspection Code: 1979 edition" into section 57.13015. *Approvals of Incorporation by Reference*, 45 Fed. Reg. 44090, 44098 (June 30, 1980); 46 Fed. Reg. 33980, 33991 (June 30, 1981). Moreover, since 2009, the Federal Register has consistently published in its electronic "Incorporation by Reference" page on the U.S. Government Printing Office's e-CFR website, as having the "National Board Inspection Code, 1979" be incorporated by reference into section 57.13015. *See Electronic Code of Federal Regulations, Title 30--Mineral Resources, Material Approved for Incorporation by Reference*, U.S. Government Printing Office, https://www.ecfr.gov/incorporation-by-reference/title-30/1-199 (last visited February 23, 2026).

[3] The practice of incorporation by reference began in 1966 to reduce the volume of material published in the Federal Register. *See* 5 U.S.C. § 552(a). Incorporation by reference "allows Federal agencies to comply with the requirement to publish rules in the Federal Register and the Code of Federal Regulations (CFR) by referring to material already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it were published in the Federal Register and CFR." *Electronic Code of Federal Regulations, Incorporation by Reference*, U.S. Government Printing Office, https://www.ecfr.gov/incorporation-by-reference (last visited February 23, 2026).

4. Doe Run's Interpretation Leads to Absurd Results

If the Court accepts Doe Run's position and alters the applicability of section 57.13015(a) because of the issuance of the National Board's 2004 NB-132 document, absurd results will follow. Specifically, Subpart L– which section 57.13015(a) is contained in–also contains section 57.13030(b) which not only similarly references that "gauges, devices and piping" of boilers must be in accordance with "a Manual for Boiler and Pressure Vessel Inspectors, 1979," but even explicitly lists the specific applicable chapters and titles of the 1979 version. 30 C.F.R. § 57.13030(b).

Therefore, if the Court were to accept Doe Run's interpretation and substitute the National Board's 2004 NB-132 document into section 57.13015(a), then this results in the absurd outcome of having two regulations within the same subpart following different versions of the same cited standards. While I recognize that section 57.13030(b) is distinguishable from section 57.13015(a) as it addresses boilers rather than "compressed-air receivers and other unfired pressure vessels," it would be illogical to find that such a distinction resolves the absurd result of having two regulations within the same subpart follow different versions of the same cited standards. 30 C.F.R. §§ 57.13015(a), 57.13030(b). Thus, section 57.13030(b) provides additional confirmation that the 1979 version of "a Manual for Boiler and Pressure Vessel Inspectors" is what is incorporated by reference in 57.13015(a).

5. Doe Run's Interpretation Violates the No-Less Protection Rule

The Secretary argues that accepting Doe Run's position–that the National Board's 2004 NB-132 document alters the applicability of section 57.13015(a)–violates the no-less protection rule in section 101(a)(9) of the Mine Act. Sec'y Reply at 6; Sec'y Memorandum in Support at 7.

Section 101(a)(9) of the Mine Act provides that "[n]o mandatory health or safety standard promulgated under [Title 1] shall reduce the protection afforded miners by an existing mandatory health or safety standard." 30 U.S.C. § 811(a)(9). In addressing the applicability of section 101(a)(9), the D.C. Circuit Court of Appeal in *Dole* explained that Congress

> placed an explicit constraint on the Secretary's authority to alter the level of protection afforded miners. . . . Thus when new standards replace existing mandatory health or safety standards it is not sufficient that the new standards demonstrate a reasonable accommodation of the competing goals of safety and efficient coal mine operation. The statute expressly mandates that no reductions in the level of safety below existing levels be permitted, regardless of the benefits accruing to improved efficiency.

UMWA v. Dole, 870 F.2d 662, 668 (D.C. Cir. 1989); *see also Brody Mining, LLC,* 36 FMSHRC 2027, 2035 (Aug. 2014).

Accordingly, as section 57.13015(a) is a mandatory health or safety standard promulgated under section 101, it falls under the umbrella of the no-less protection rule in section 101(a)(9) of the Mine Act. Therefore, if I accept Doe Run's interpretation and find that

the issuance of the National Board's 2004 NB-132 document exempts the cited equipment from the requirements of section 57.13015(a), then such a position would allow the regulation to reduce the protection afforded to miners from the National Board's 1979 "Manual for Boiler and Pressure Vessel Inspectors" and thus violate section 101(a)(9) of the Mine Act.

6. 30 C.F.R. § 57.13015(a) Incorporates the 1979 Standard

While I am sympathetic to Doe Run's situation, even in the light most favorable to it, I cannot ignore and substitute the plain language of section 57.13015(a) that clearly states that the applicable chapters of the "[NBIC], a Manual for Boiler and Pressure Vessel Inspectors, *1979*" is what is incorporated by reference. 30 C.F.R. § 57.13015(a) (emphasis added). Doing so would not only ignore the plain reading of the regulation but would also violate section 101(a)(9) of the Mine Act and lead to an absurd result. Additionally, it would be erroneous for me to ignore the repeated explicit affirmation from the Director of the Federal Register, listing the material approved for incorporation by reference for section 57.13015 as being the "National Board Inspection Code, *1979*." *Electronic Code of Federal Regulations, Title 30--Mineral Resources, Material Approved for Incorporation by Reference*, U.S. Government Printing Office, https://www.ecfr.gov/incorporation-by-reference/title-30/1-199 (last visited February 23, 2026) (emphasis added). Lastly, even in the light most favorable to Doe Run, I cannot ignore that the dynamic incorporation that Doe Run suggests is impermissible in either a regulatory or statutory framework as it would violate the notice and comment requirements of the APA and require that I forego the explicit requirements of 1 C.F.R. § 51.11(a).

In light of the discussion above, I determine that the issuance of the National Board's 2004 NB-132 document does not alter the applicability of section 57.13015(a). Accordingly, I conclude that section 57.13015(a)'s specific reference to the 1979 version of "a Manual for Boiler and Pressure Vessel Inspectors" indicates that the materials incorporated by reference are solely the applicable chapters of the 1979 version.

B. Adequate Notice to Doe Run

In the alternative, Doe Run argues that it lacked adequate notice to the applicability of section 57.13015(a) to the cited vessel because: (1) the exempting of certain pressure vessels by the National Board's 2004 NB-132 document called into question the applicability of section 57.13015(a) to the cited vessel; (2) section 57.13015(a) is ambiguous as it does not define pressure vessel; and (3) MSHA never cited the tank under section 57.13015(a) in the past 20 years and there are no MSHA policy documents that address this standard or issue. As a result, Doe Runs argues that section 57.13015(a) is impermissibly vague and therefore Citation No. 9767916 should be vacated. Resp't Response at 5–9.

In response, the Secretary argues that "[n]othing about [section 57.13015(a)]'s language is ambiguous . . . [as] [t]he standard plainly and unambiguously points the reader to the 1979 Code." Sec'y Reply at 7. Additionally, the Secretary argues that the fact that Doe Run had never received a citation for this violation before is irrelevant because "[t]here is no requirement that an operator be cited prior to the enforcement of a standard." Sec'y Reply at 8.

In reviewing the parties' filings and supporting documentation in the light most favorable to Doe Run, I find Doe Run's arguments unpersuasive for the following reasons.

1. 30 C.F.R. § 57.13015(a) is Unambiguous

At the outset, the Commission has held that if the language of a regulation provides clear and unambiguous notice of its coverage and requirements, no further notice is necessary. *Bluestone Coal. Co.*, 19 FMSHRC at 1028–29 (holding that when a regulatory provision is clear and unambiguous, then the regulation provides adequate notice); *Nolichuckey Sand Co.*, 22 FMSHRC at 1061 (holding that when "'the meaning of a standard is clear based on its plain language, it follows that the standard provided the operator with adequate notice of its requirements'") (citing *LaFarge Constr. Materials,* 20 FMSHRC at 1144).

A plain reading of section 57.13015(a) clearly states "the applicable chapters of the [NBIC], a Manual for Boiler and Pressure Vessel Inspectors, ***1979*** . . . is incorporated by reference and made a part of this standard." 30 C.F.R. § 57.13015(a) (emphasis added). Thus, it is difficult to view such language as unclear or ambiguous as to what version it refers to. Indeed, both the Commission and two ALJs reviewed the identical regulatory language for the analogous surface mine standard–30 C.F.R. § 56.13015(a)–and held that the standard's plain and unambiguous language "provided [the operator] with adequate notice that an inspection by a person with a valid Commission was required." *Rain For Rent*, 39 FMSHRC 1448, 1452, (July 2017) (ALJ), *aff'd*, 40 FMSHRC 976, 978 (July 2018), *aff'd*, 2015 WL 9684710, * (Feb. 2020) (ALJ). Accordingly, I determine that section 57.13015(a) is unambiguous.

2. Definition of Pressure Vessel

Doe Run argues that because both the 1979 manual and section 57.13015(a) do not define "pressure vessel," it is unclear whether the cited vessel is considered a "pressure vessel" under section 57.13015(a). Resp't Response at 5–6. Therefore, Doe Run asserts that "[i]n the circumstance where a vital term has not been defined [a] statute may be considered impermissibly vague." Resp't Response at 6 (citing *Stephenson v. Davenport Community School District*, 110 F. 3d 1303, 1308 (10th Cir. 1997). In response, the Secretary argues that the undisputed facts regarding the cited equipment's specifications clearly establish that it is a pressure vessel. Sec'y Reply at 4–5.

It is undisputed that "[t]he term "pressure vessel" is not defined in the Mine Act, the accompanying regulations, or the 1979 Code." Sec'y Reply at 4. However, as the Secretary correctly notes, "[i]n the absence of a statutory definition, courts typically 'construe a statutory term in accordance with its ordinary or natural meaning.'" Sec'y Reply at 4 (citing *FDIC v. Meyer*, 510 U.S. 471, 476 (1994)). Indeed, in these instances the Commission has looked to common dictionary definitions to determine a word's ordinary or natural meaning. *See Knight Hawk Coal, LLC*, 46 FMSHRC 563, 567 n.5 (Aug. 2024) (looking to the dictionary to determine the meaning and intent of terms not defined by the Mine Act).

Doe Run admits that the cited equipment in Citation No. 9767916. is "a tank that holds 250 gallons of water under 125 psi of pressure."[4] Resp't Response at 1; Resp't Amended Pre-Hr'g Statement at 1. Utilizing the same approach as the Commission in *Knight Hawk Coal, LLC*, the term "pressure vessel" is defined by Merriam-Webster as "a container (as a tank, boiler, shell, cylinder) subjected in use to disruptive pressure." *Pressure Vessel*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/pressure%20vessel (last visited February 23, 2026). Similarly, another dictionary defines "pressure vessel" as "engineering a vessel designed for containing substances, reactions, etc, at pressures above atmospheric pressure." *Pressure Vessel*, DICTIONARY.COM, https://www.dictionary.com/browse/pressure%20vessel (last visited February 23, 2026)." Doe Run's own admitted characteristics of the cited equipment clearly places it under either dictionary definition as it is a container or vessel–"tank"– that contains a substance–"250 gallons of water"–that is held at above atmospheric pressure–"125 psi."[5] Resp't Response at 1; Resp't Amended Pre-Hr'g Statement at 1. Indeed, even the National Board's 2004 NB-132 document, which Doe Run argues is the applicable standard for section 57.13015(a), similarly defines "pressure vessel" as "a vessel in which the pressure is obtained from an external source, or by the application of heat from an indirect source, or from a direct source other than those boilers defined in item 14." Resp't Response at 3; Ex. R–3. Similarly, Doe Run's own admitted characteristics of the cited equipment fall into this definition as well.

Accordingly, I determine that the tank on the Tamrock Drill is a pressure vessel given the term's ordinary and natural meaning.

3. Estoppel is Contrary to Law

Doe Run argues that it lacked adequate notice as to the applicability of section 57.13015(a) because the fact that MSHA never cited the tank in the past 20 years may be evidence that previous MSHA inspectors had contrary interpretations. Resp't Response at 5, 9. Additionally, Doe Run argues that the fact that there are no MSHA policy documents that address section 57.13015(a), and that an independent third party inspector indicated that the tank was "exempt," is further indication that it lacked adequate notice. Resp't Response at 5–6. In response, the Secretary argues that there is no requirement that an operator be cited prior to the enforcement of a standard and that such a belief is contrary to law. Sec'y Reply at 8.

Despite Doe Run's assertions, courts have consistently held that there is no requirement that an operator be cited prior to the enforcement of a standard. *See Cactus Canyon Quarries, Inc.* 953 F.3d at 793 (rejecting operator's argument that an inspector was not allowed to cite equipment that had never been cited for decades because the "Secretary 'cannot be estopped from enforcing its regulations simply because it did not previously cite the mine operator'"); *see also Mainline Rock & Ballast, Inc.* 693 F.3d at 1187 (rejecting an operator's lack of adequate

[4] Although the Secretary disputes the psi of the cited equipment as being 150-160 psi, I interpret the facts of this matter in the light most favorable to Doe Run. Accordingly, I find that the cited equipment in Citation No. 9767916 is under 125 psi.

[5] Atmospheric pressure at sea level is 14.7 psi *Air Pressure*, NOAA, https://www.noaa.gov/jetstream/atmosphere/air-pressure, (last visited February 23, 2026).

notice argument because "those who deal with the Government are expected to know the law and may not rely on the conduct of government agents contrary to the law") (citing *Emery Mining Corp.* 744 F.2d at 1416–1417). Moreover, there are "no regulations requiring MSHA to police the mining industry to the extent of discovering and preventing every mine operator from using every piece of equipment which may violate MSHA regulations. Such a requirement would exceed the capabilities of the agency and throw into question the feasibility of the regulatory scheme." *Wallace v. U.S. Dep't of Lab.*, 717 F. Supp. 1466, 1468 (D. Wyo. 1989).

Additionally, Doe Run's reliance on an independent third party inspector–who indicated that the cited vessel was exempt from inspection–is misplaced as the opinions of a third party have no bearing on whether MSHA can cite a violation. In fact, courts have gone so far as holding that an operator's reliance on an MSHA inspector incorrectly informing them that equipment did not need to be guarded was insufficient to prevent the finding of a violation. *Mainline Rock & Ballast, Inc.* 693 F.3d at 1187 (rejecting an operator's lack of adequate notice argument because "those who deal with the Government are expected to know the law and may not rely on the conduct of government agents contrary to the law"); *see also Emery Mining Corp.* 744 F.2d at 1416–17 (holding that "MSHA officials . . . [have] no authority to waive the [Mine] Act's requirements" and that an operator assumes the risk that an MSHA official's interpretation may be in error). Instead, the court in *Mainline* emphasized that as long as the standard is "sufficiently specific that a reasonably prudent person, familiar with the conditions of the regulation are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations would require," then the due process notice requirements are met. *Mainline Rock & Ballast, Inc.,* 693 F.3d at 1187.

In light of the discussion above, I cannot ignore the overwhelming amount of precedent rejecting the same estoppel arguments that Doe Run puts forth in support of its claim that it lacked adequate notice. Accordingly, even though MSHA never cited the pressure vessel in the past 20 years, there are no MSHA policy documents that address this standard or issue, and an independent third party inspector indicated that the pressure vessel was "exempt," this is still insufficient to support Doe Run's claim that it lacked adequate notice.

4. Doe Run had Adequate Notice

Even in the light most favorable to Doe Run, I cannot ignore the plain and unambiguous language of section 57.13015(a) that "the applicable chapters of the [NBIC], a Manual for Boiler and Pressure Vessel Inspectors, 1979" is what is incorporated by reference. 30 C.F.R. § 57.13015(a). Additionally, Doe Run's argument–that the regulation is impermissibly vague–still fails as the ordinary or natural meaning of "pressure vessel" provides adequate notice of its applicability. Lastly, it would be erroneous for me to ignore the overwhelming amount of precedent rejecting the estoppel arguments that Doe Run puts forth in support of its claim that it lacked adequate notice.

Accordingly, in light of the discussion above, I conclude that Doe Run had adequate notice as to the applicability of section 57.13015(a) to the cited pressure vessel in Citation No. 9767916.

C. Violation of 30 C.F.R. § 57.13015(a)

The requirements of section 57.13015(a) are twofold. First, it requires that "[c]ompressed-air receivers and other unfired pressure vessels . . . be inspected by inspectors holding a valid National Board Commission [certification]." 30 C.F.R. § 57.13015(a). Second, it requires that the inspection be conducted "in accordance with the applicable chapters of the [NBIC], a Manual for Boiler and Pressure Vessel Inspectors, 1979." *Id.*

Neither party disputes the factual circumstances of Citation No. 9767916–namely, that Doe Run's 250-gallon pressure vessel was not inspected by an inspector holding a valid National Board Commission certification. Resp't Response at 1–2, 5; Resp't Amended Pre-Hr'g Statement at 1–3; Sec'y Memorandum in Support at 3, 8–9, 10; Sec'y Reply at 1. Indeed, Doe Run admits that it "believed it was exempt from such inspection" and does not dispute MSHA Inspector Santhuff's claim that the "tank had not been inspected for 20 years." Resp't Response at 2, 5. Therefore, based on my determination that the issuance of the National Board's 2004 NB-132 document does not alter the applicability of section 57.13015(a), and that Doe Run had adequate notice of the applicability of section 57.13015(a), I determine that Doe Run's failure to have the cited pressure vessel inspected by an inspector holding a valid national board commission certification constitutes a violation of section 57.13015(a). *See* discussion *supra* Part VI.A–B.

Therefore, as Doe Run violated the first requirement of section 57.13015(a), I find that consideration of the second requirement unnecessary.[6] *See Rain For Rent*, 39 FMSHRC at 1452 (holding that the court need not address arguments regarding the enforcement of state regulations as they relate to the NBIC because the violation of section 56.13015[7] could be established solely on the MSHA Inspector's findings that the cited pressure vessel was not inspected by an individual with a National Board Commission certification), *aff'd*, 40 FMSHRC 976, 978 (July 2018). Accordingly, I conclude that the Secretary has established that Doe Run violated section 57.13015(a).

1. Gravity Designations for Citation No. 9767916

Doe Run does not dispute MSHA Inspector Santhuff's gravity assessment for Citation No. 9767916. Resp't Response at 1–10; Resp't Amended Pre-Hr'g Statement at 1–3. Santhuff assessed the likelihood of injury or illness to be "unlikely," because the "pressure vessel relief valve and tank appeared to be in good condition." Sec'y Memorandum in Support at 12; Ex. S–A. Santhuff also determined the violation could cause an injury resulting in "lost workdays or

[6] Both parties presented arguments and introduced evidence regarding the applicability of Missouri state regulations to the cited pressure vessel and how they relate to the NBIC. Resp't Response at 4, 8–9; Sec'y Memorandum in Support at 9–10. However, as this matter can be decided solely on the safety standard cited by MSHA Inspector Santhuff, I do not address the issue of whether Missouri state regulations are applicable to the cited pressure vessel.

[7] Section 56.13015 is the analogous surface mine standard and contains the identical regulatory language as section 57.13015. *See* 30 C.F.R. §§ 56.13015, 57.13015.

restricted duty" to one person because if the "vessel deteriorates it could fail under pressure which could lead to injuries from flying shrapnel" such as "cuts, broken bones, and eye injuries" to "personnel in the surrounding work area, including the individual operating the Tamrock drill." Sec'y Memorandum in Support at 4, 12; Ex. S–A. In light of the circumstances, I agree with Santhuff's assessment and conclude that an incident involving the violative conditions was unlikely to cause an injury resulting in "lost workdays or restricted duty" to one person.

2. Negligence Designation for Citation No. 9767916

The Commission evaluates the degree of negligence using "a traditional negligence analysis" that considers what actions a reasonably prudent person familiar with the mining industry would have taken under the same circumstances, the relevant facts, and the protective purpose of the regulation. *Am. Coal Co.*, 39 FMSHRC 8, 14 (Jan. 2017) (quoting *Mach Mining, LLC v. Sec'y of Labor*, 809 F.3d 1259, 1263–64 (D.C. Cir. 2016) (citation omitted)); *Brody Mining, LLC*, 37 FMSHRC 1687, 1702 (Aug. 2015).

Doe Run does not dispute MSHA Inspector Santhuff's negligence assessment for Citation No. 9767916. Resp't Response at 1–10; Resp't Amended Pre-Hr'g Statement at 1–6. Santhuff designated Doe Run's negligence as "low" because he "understood this was the first citation Doe Run had received for this type [of] vessel attached to mobile equipment." Sec'y Memorandum in Support at 4, 12; Ex. S–A. Based on the totality of the evidence, I conclude Doe Run's negligence to be low.

VII. PENALTY

The Commission is not bound by the Secretary's proposed penalty and reviews penalty assessments *de novo*. *Mach Mining, LLC v. Sec'y of Labor*, 809 F.3d 1259, 1263–64 (D.C. Cir. 2016). Under section 110(i) of the Mine Act, I must consider six criteria in assessing a civil penalty: (1) the operator's history of previous violations; (2) the appropriateness of the penalty relative to the size of the operator's business; (3) the operator's negligence; (4) the penalty's effect on the operator's ability to continue in business; (5) the violation's gravity; and (6) the demonstrated good faith of the operator in attempting to achieve rapid compliance after notification of a violation. 30 U.S.C. § 820(i).

The Secretary proposes a penalty of $151.00 for Citation No. 9767916. Ex. S–D. Doe Run is a large operator, operating 243,997 mine hours in the last four quarters of operation. Sec'y Memorandum in Support at 4, 13. In the fifteen months preceding the issuance of this citation, MSHA did not issue any violations of section 57.13015(a) to Doe Run's Viburnum #35 (Casteel Mine). Ex. S–D. Doe Run has stipulated that the proposed penalty would not adversely affect its ability to continue in business. Resp't Amended Pre-Hr'g Statement at 5. I concluded that Doe Run exhibited a low level of negligence. *See* discussion *supra* Part VI.C.2. Regarding gravity, I concluded that the violation was unlikely to cause an injury resulting in lost workdays or restricted duty to one person. *See* discussion *supra* Part VI.C.1. Finally, Doe Run demonstrated good faith in abating the citation by having the cited pressure vessel inspected by a certified inspector. Sec'y Memorandum in Support at 13; Ex. S–A. In considering the criteria

set forth in section 110(i) of the Mine Act and all the relevant facts, I hereby assess a penalty of $151.00.

VIII. ORDER

In light of the foregoing, the Secretary's Motion for Summary Decision is hereby **GRANTED**. Accordingly, it is hereby **ORDERED** that Citation No. 9767916 is **AFFIRMED** as issued.

Respondent is **ORDERED** to pay the Secretary of Labor a civil penalty of **$151.00** within 30 days of this decision. [8]

David P. Simonton
Administrative Law Judge

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[8] Please pay penalties electronically at Pay.Gov, a service of the U.S. Department of the Treasury, at https://www.pay.gov/public/form/start/67564508.