FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 20, 2025

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner, v. IRON MOUNTAIN QUARRY LLC, Respondent	CIVIL PENALTY PROCEEDINGS Docket No. WEST 2024-0218 A.C. No. 45-03175-596374 Docket No. WEST 2024-0275 A.C. No. 45-03175-600248 Mine: Iron Mountain Quarry

DECISION AND ORDER

Appearances: Rafael Bortnick, Simon Jacobs, and Joshua Falk, U.S. Department of Labor, Office of the Solicitor, 90 7th St, Suite 3-700, San Francisco CA 94103

Selena C. Smith, Davis Grimm Payne & Marra, 701 5th Ave, Suite 3500, Seattle, WA 98104

Before: Judge Simonton

I. INTRODUCTION

These cases are before me on a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration, against Iron Mountain Quarry LLC ("Iron Mountain" or "Respondent"), pursuant to the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 801.[1] These dockets originally contained sixteen 104(a) citations; Citation Nos. 9688317, 9688322, and 9688323 were settled prior to hearing. The thirteen remaining citations are associated with a proposed penalty of **$4,603.00** against Iron Mountain.

The parties presented testimony and documentary evidence at a hearing held on May 6-7, 2025, in Seattle, Washington. Field Office Supervisor Andrew Aerni and Inspectors Joshua Mathisen and Devin Drobny testified for the Secretary. Iron Mountain owner James Burnett, site superintendent Cody Freeman, plant foreman Jarred Braaten, and senior operator Steven Van

[1] In this decision, the transcript, exhibits, and Respondent's exhibit are abbreviated as "Tr.," "Ex. #," and "R-#" respectively.

Proyen testified for the Respondent. After fully considering the testimony and evidence presented at hearing and the parties' post-hearing briefs, I **AFFIRM** Citation Nos. 9683849, 9688120, 9688121, 9688122, 9688124, 9688125, 9688316, 9688318, 9688319, 9688320, and 9688324 as issued, and **AFFIRM** Citation Nos. 9683850 and 9688123 as modified herein.

II. STIPULATIONS

At hearing, the parties stipulated to the admission of 63 joint exhibits. Tr. I-8. No other stipulations were entered into the record. In the absence of arguments to the contrary, I assume the only contested issues are those raised by the parties during the hearing and in the post-hearing briefs.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The citations at issue were issued by Field Office Supervisor Andrew Aerni and Inspectors Joshua Mathisen and Devin Drobny during an impact inspection conducted on February 27, 2024. This was Aerni's first impact inspection as the Field Office Supervisor, where he selected the mine site and determined the standards that would comprise the impact inspection based on the mine site's history. Tr. I-47-48.

For the first time at trial, the Respondent argues that the impact inspection was improperly conducted and was not supported by the mine's citation history, injury history, or other factors used by MSHA to support an impact inspection. This argument is unavailing. The policy guidance published by MSHA is meant to provide examples of when an impact inspection may be appropriate and is not exclusive or otherwise limiting. Sam Casey, *Why We Use Impact Inspections to Protect Miners*, U. S. Dep't of Lab., https://blog.dol.gov/2023/10/04/why-we-use-impact-inspections-to-protect-miners (Oct. 4, 2023); *see also Big Ridge Inc. v. Secretary of Labor,* 36 FMSHRC 1677, 1725-1726 (2014). Further, as noted by the Secretary, the language of the Mine Act gives MSHA broad authority to enter mine sites for the purpose of conducting inspections. Field Office Supervisor Andrew Aerni testified that based on his personal experience inspecting at Respondent's mine there were specific standards he noted, conditions that seemed to be a running theme with the mine whereby he recommended to the MSHA District management that an impact inspection be conducted. Tr. I-21. Based on Inspector Aerni's personal knowledge and experience with the mine I find that the impact inspection was a valid inspection well within MSHA's authority, and I turn now to analyzing the facts and circumstances surrounding each alleged violation.

A. Citation No. 9683849

i. Summary of Testimony

Andrew Aerni, in his capacity as an inspector, issued this citation for a housekeeping violation after observing the condition of the catwalk adjacent to the inline belt in the jaw area. Tr. I-23; Ex. 1. Substantial material, consisting of fines and larger rock, covered the entire length of the catwalk, which was used for maintenance. Tr. I-24-25; Ex. 3. There were no footprints or other tracks to indicate that someone accessed the area. Tr. I-56-57. Aerni could not recall if there were miners assigned to work nearby. Tr. I-57-58. There was a chain across the entrance to

the walkway, with an attached sign to alert miners to keep out. Tr. I-27; Ex. 3. Aerni testified that this type of barricade is often breached because the chain is easily defeatable and the sign does not identify the specific hazard. Tr. I-61-63. After examining the amount of material, Aerni believed this condition had existed for at least one shift. Tr. I-26. To achieve compliance, passageways should be shoveled off within a reasonable time frame as soon as hazardous conditions are identified. Tr. I-58-59, I-65. Aerni believed the operator had taken too long to address the condition. Tr. I-63.

He marked the likelihood of injury as unlikely because there was no evidence that anyone had been exposed to the hazard. Tr. I-29. As slip, trip, and fall injuries would occur, the hazard would cause lost workdays or restricted duty. Tr. I-29-30. One miner would be affected. Tr. I-32. Because the operator had provided the sign and the conditions were easily visible from a distance, the inspector assigned the negligence as moderate. Tr. I-33.

Steven Van Proyen, senior operator at Iron Mountain, also viewed the cited conditions while accompanying Aerni on the inspection. Tr. II-73. He said the catwalk would be cleaned prior to access and the chain prevents people from walking on the catwalk. Tr. II-76-77. There were no miners working in the area. Tr. II-78. He could not recall any instances of slip, trip, or fall injuries at Iron Mountain. Tr. II-82-83.

ii. Fact of Violation

The Commission has long held that "[i]n an enforcement action before the Commission, the Secretary bears the burden of proving any alleged violation." *Jim Walter Res., Inc.*, 9 FMSHRC 903, 907 (May 1987); *Wyoming Fuel Co.*, 14 FMSHRC 1282, 1294 (Aug. 1992). The burden of showing something by a "preponderance of the evidence," the most common standard in the civil law and the standard applicable here, simply requires the trier of fact "to believe that the existence of a fact is more probable than its nonexistence." *RAG Cumberland Res. Corp.*, 22 FMSHRC 1066, 1070 (Sept. 2000); *Garden Creek Pocahontas Co.*, 11 FMSHRC 2148, 2152 (Nov. 1989).

On February 27, 2024, Aerni issued 104(a) Citation No. 9683849, which alleged:

> Standard 56.20003(a) was cited 6 times in two years at mine 4503175 (6 to the operator, 0 to a contractor).
>
> The travelway adjacent to the inline belt located at the jaw was not kept clean. There was material buildup that consisted of fines to 8" rock covering the entire length (approx. 30') of the travelway. The material was approx. 1' deep at the entrance to the travelway. The travelway is accessed about once per week according to the lead and no footprints were observed in the material. Were this condition to continue and miners to access the travelway, serious slip, trip, and fall injuries could occur.

Ex. 1; Tr. I-24.

Aerni designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.20003(a) that was unlikely to cause an injury that could reasonably be expected to result in "lost workdays or restricted duty," would affect one miner, and was caused by Respondent's moderate negligence.

30 C.F.R. § 56.20003(a) states that "[w]orkplaces, passageways, storerooms, and service rooms shall be kept clean and orderly."

The language of the standard is clear that passageways must be kept clean and orderly. The evidence and testimony showing the catwalk with 30 feet of material covering sufficiently demonstrates that it was not clean and orderly. The Secretary has proven a violation of 30 C.F.R. § 56.20003(a).

iii. Gravity

The inspector assessed the hazard as unlikely to cause an injury because there was no indication the catwalk had been accessed. Should an injury occur, the inspector determined that it would cause lost workdays or restricted duty consistent with slip, trip, or fall injuries such as sprains, lacerations, or broken bones. I affirm these designations.

iv. Negligence

Under the Mine Act, operators are held to a high standard of care, and "must be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices." 30 C.F.R. § 100.3(d). MSHA's regulations define reckless disregard as conduct which exhibits the absence of the slightest degree of care, high negligence as actual or constructive knowledge of the violative condition without mitigating circumstances; moderate negligence as actual or constructive knowledge of the violative condition with mitigating circumstances; and low negligence as actual or constructive knowledge of the violative condition with considerable mitigating circumstances. 30 C.F.R. § 100.3: Table X.

Aerni assessed the negligence as moderate. The condition was visible from a distance and there was a chain and a sign across the entrance to the catwalk. Given that the material most likely accumulated over several shifts and there was no evidence to suggest anyone entered the area, I affirm this designation.

B. Citation No. 9683850

i. Summary of Testimony

Aerni issued this citation for a pile of wet material three feet deep located at the top of a set of stairs in the jaw area. Tr. I-35-36; Ex. 5, 9. In addition to the pile at the top of the stairs, material also extended thirty feet down the length of the passageway. Tr. I-36. The material was covered in snow, which showed footprints and other signs of compaction, and was estimated to have existed for multiple shifts. Tr. I-37-38; Ex. 7. There was no barricade or sign to either prevent access or alert someone to the hazard. Tr. I-38.

The inspector marked the violation as reasonably likely because the material was slick and people had clearly accessed the area in a hazardous condition. Tr. I-39-40. The violation would cause slip, trip, and fall injuries resulting in lost workdays or restricted duty. Tr. I-40. He determined that the violation was significant and substantial due to greater exposure to the hazard. Tr. I-41. One miner would be affected. Tr. I-43. The negligence was determined to be moderate because the condition was readily visible. Tr. I-43-44.

Van Proyen again stated that the area would be cleaned and shoveled before miners accessed it. Tr. II-79, II-81-82. It was not a main travelway and was only used for maintenance and repair, and no one worked in the area. Tr. II-79-80. The hazard visible at the top of the stairs was because a Bobcat vehicle had been used to pile the material and the operator had not hand-shoveled the area yet. Tr. II-81; Ex. 7.

ii. Fact of Violation

On February 27, 2024, Aerni issued 104(a) Citation No. 9683850, which alleged:

> The travelway located on the East side of the feeder was not kept clean. There was mud buildup throughout the length of the travelway and a large pile of material that was located at the North end of the travelway at the top of a set of stairs. Footprints were observed in the material at the top of the stairs and through the muddy buildup. Were miners to continue to access the area in this condition, serious slip, trip, and fall injuries would likely occur.

Ex. 5; Tr. I-34-35.

The citation was designated as a significant and substantial violation of 30 C.F.R. § 56.20003(a) that was reasonably likely to cause an injury that could reasonably be expected to result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 5.

As evidenced by the three feet of buildup, the staircase was not in a clean and orderly condition. I find there has been a violation of the cited standard.

iii. Gravity and S&S

The inspector assessed the hazard as reasonably likely because of the slickness of the material and the footprints that demonstrated that someone had entered the area. He determined that it would cause slip, trip, and fall injuries such as sprains, leading to lost workdays or restricted duty. The material at the top of the stairs was three feet high, and muddy and slick. Footprints showed that someone had been exposed to the hazards posed by this material pile. These designations are affirmed.

The citation was also designated as significant and substantial. To establish that a violation is significant and substantial, the Secretary of Labor must prove: (1) the 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 that 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). The Commission has explained that "the proper focus of the second step of the [S&S] test [is] the likelihood of the occurrence of the hazard the cited standard is designed to prevent." *Newtown Energy, Inc*., 38 FMSHRC 2033, 2037 n.8 (Aug. 2016).

The fact of violation has already been established, as the stairway is a passageway that was not kept in a clean and orderly condition. The cited standard is meant to protect against slip, trips, and falls, which the inspector testified were likely to occur from someone walking on the slippery material. An evaluation of the reasonable likelihood of injury should be made assuming continued normal mining operations. *See U.S. Steel Mining Co*., 7 FMSHRC 1125, 1130 (Aug. 1985). Presuming the hazardous conditions would continue unabated and the catwalk would remain covered with slick material, I find these conditions are reasonably likely to cause a reasonably serious injury. The S&S designation is affirmed.

iv. Negligence

The negligence was assessed as moderate. However, despite management's knowledge of the hazard, the condition had existed for multiple shifts without rope or another barricade to prevent access. Although the Respondent maintains that the area would be shoveled out and cleaned before miners accessed it, footprints in the material clearly show that someone entered the area while it was in a hazardous condition. Therefore, I am increasing the negligence designation to high.

C. Citation No. 9688120

i. Summary of Testimony

While examining the main feed belt at the lower plant, Inspector Joshua Mathisen observed carryback material along the length of the framework. Tr. I-68-69; Ex. 10, 13. The belt's wiper was ineffective, which allowed the material to accumulate. Tr. I-69-70, I-74, I-122. As the material is made of silts and clays, it can clump together when wet and remain bonded after it dries. Tr. I-124-125. Cold weather conditions, like those experienced on the morning of the inspection, can also cause it to freeze and contribute to the hazard posed by the material. Tr. I-71, I-122-123.

In addition to the material under the belt, Mathisen also observed two chunks of material, each ten inches in diameter and nine to ten inches high, falling from a height of 45 feet. Tr. I-70-72; Ex. 15. After impact with the ground, the material remained adhered together in a sizable chunk. Tr. I-71, I-123. Three miners were working in the area and tire tracks underneath the belt indicated that people were traveling through the area. Tr. I-70. No measures had been taken to prevent miners from accessing the area. Tr. I-75.

The inspector designated the violation as reasonably likely because falling clumps could injure a miner. Tr. I-70, I-75, I-77. The inspector testified regarding his personal training experience with a colleague who received a permanently disabling injury from a similar falling materials hazard. Tr. I-79. Accordingly, the inspector determined that the hazard would cause permanently disabling injuries such as loss of limb or limb function. Tr. I-78-79. The violation was also determined to be S&S. Tr. I-79-80. One miner would be affected by this violation, because while three miners were exposed, only one could be expected to be ultimately impacted. Tr. I-80. The inspector determined it was moderate negligence because it was not an area where management travels, and no one notified the superintendent of the conditions. Tr. I-80-81.

Cody Freeman, the site superintendent at Iron Mountain, observed the conditions at the lower plant while accompanying Mathisen. Tr. II-7, II-20. Because the weather was cold and wet, the material was heavier than normal and slowed the machines down. Tr. II-19. He did not think that the grit would cause permanently disabling injuries, because it is brittle and flaky, not hard or compact. Tr. II-35. Miners usually travel under the belt in a pickup or skidsteer with a covered cab, and would not be underneath the belt unprotected. Tr. II-36.

James Burnett, the owner of Iron Mountain, provided testimony regarding the characteristics and composition of the grit material at issue, describing it like beach sand. Tr. II-87, II-98, II-101; Ex. R-1. There is a miniscule amount of clay in the material. Tr. II-105. While the grit on the morning of the inspection was wet, Burnett stated that this would not impact clumping. Tr. II-103. Even in wet weather conditions, like those on the day of the impact inspection, the material would not be hazardous to miners because it would break apart on contact. Tr. II-106.

ii. Fact of Violation

On February 27, 2024, Mathisen issued 104(a) Citation No. 9688120, which alleged:

> The Screen 9 Main Feed Belt had a falling material hazard. The conveyor belt was operating with 2 inch minus rock and had moderate to large chunks of carryback material on the under framework of the conveyor and in areas around the belt take-up. The Screen 9 Main Feed belt was about 200 feet long and extended from near ground level to about 45 feet high. There was a plant road below this long conveyor that runs between much of the plant. While approaching the area, a large chunk of material was seen falling from this conveyor and while examining the conveyor belt, another large [chunk] of material was observed falling from about 45 feet high. There are three groundman that work at this mine. If material was to fall and land on a miner, permanent disabling injury could occur. Caution tape and other measures were taken after this citation was issued to keep miners and equipment from going under the Screen 9 Main Feed Belt.

Ex. 10; Tr. I-68-69.

Mathisen designated the citation as a significant and substantial violation of 30 C.F.R. § 56.14110 that was reasonably likely to cause an injury that could be expected to be permanently

disabling, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 10.

30 C.F.R. § 56.14110 states that "[i]n areas where flying or falling materials generated from the operations of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons."

In their post hearing brief and through Exhibit R-1, the Respondent contends that the material is a sand-like fine grit that breaks apart on contact and does not pose a hazard. However, there were wet weather conditions on the day of the citation with temperatures at or around freezing. The inspector testified that under these types of conditions, carryback material, including fines, can bond together and form clumps. I credit the inspector's characterization of the material and assessment of the hazard, given the cold and wet weather conditions on the day of the inspection, and place little weight on Exhibit R-1. *Buck Creek Coal*, 52 F.3d 133, 135-36 (7th Cir. 1995)

The belt's wiper was ineffective on the day of the inspection, causing wet material to gather underneath the framework. The inspector witnessed two instances of large clumps falling from the belt while the inspection was ongoing. I find that this constitutes a violation of the cited standard.

iii. Gravity and S&S

The inspector assessed the hazard as reasonably likely to cause an injury that would result in permanently disabling injuries. Tire tracks were observed in the dirt underneath the belt, demonstrating that miners had traveled in the area. At hearing, the inspector testified extensively about the severity of potential injuries, even citing his own experience working with a colleague who suffered a permanently disabling injury from similar circumstances. I uphold the inspector's designations.

As a violation has occurred, I now assess whether the violation was reasonably likely to cause the occurrence of a discrete safety hazard. The hazard here is material falling onto miners working or traveling on the road underneath the belt, which the standard is meant to protect against. I find that this hazard is reasonably likely to occur, as significant material had gathered underneath the belt 45 feet above the ground, two large chunks fell, and there were three miners and tire tracks in the area. Even if miners were traveling in a skidsteer, substantial material, like that witnessed by the inspector, could strike the windshield thus, I find that it is reasonably likely to cause an injury of a reasonably serious nature. I affirm the S&S designation.

iv. Negligence

Mathisen assessed the negligence as moderate, because the operator should have known of the violative condition. I uphold the inspector's determination.

D. Citation No. 9688121

i. Summary of Testimony

Mathisen again observed a falling material hazard at the lower plant at the screen six conveyor belt. Tr. I-82; Ex. 16. The belt, which was in operation, did not have a guard or wipers. Tr. I-82-83. The moist conditions allowed the material to stick and accumulate on the framework. Tr. I-82, I-85-86. Two large chunks formed that could fall, in addition to smaller bits of material that were actively falling on the roadway. Tr. I-83-84; Ex. 16. The inspector also saw a truck driving in the area and tire tracks. Tr. I-82-83, I-86; Ex. 18, 19.

The inspector marked this citation as unlikely, because while there were two bigger clumps, most of the smaller rock was not hazardous. Tr. I-87-88. The bigger clumps were only 15 to 20 feet high and would likely only cause strains leading to lost workdays or restricted duty whereas it would cause more severe injuries if they had been higher. Tr. I-88-89. As it is unlikely for the same falling material to strike more than one person, one miner would be affected. Tr. I-90. Because there were only two clumps of concern, he assessed the negligence as moderate. Tr. I-90.

Freeman disagreed with the inspector's assessment of the severity of injury, as he did not think the material, which he described as "fines," would result in lost workdays or restricted duty. Tr. II-37. Miners travel in vehicles with enclosed cabs and do not walk underneath the belt unprotected. Tr. II-38-39. Accordingly, he did not believe there was anything hazardous. Tr. II-39

ii. Fact of Violation

On February 27, 2024, Mathisen issued 104(a) Citation No. 9688121, which alleged:

> The Screen 6 Feed Belt had a falling material hazard. This conveyor belt was operating with ¾ inch minus material and carryback material was seen on the conveyor under the framework. The carryback material ranged up to about 8 inches high and about 2 feet long on the framework. This conveyor belt was about 80 feet long and went from near ground level to about 35 feet high. During the examination of the conveyor belt, small material was seen coming down and loose wet material was covering the area below the conveyor belt. There was a plant road below this conveyor belt that was typically used by front end loaders. There are 3 groundman at this mine. If material were to fall and land on a miner, lost workdays or restricted duty injuries could occur.

Ex. 16; Tr. 100.

Mathisen designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.14110 that was unlikely to cause an injury that could result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 16.

30 C.F.R. § 56.14110 states that "[i]n areas where flying or falling materials generated from the operations of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons."

The conditions of this violation were similar to those of Citation No. 9688120, with wet carryback material accumulating under the belt. The belt did not have a wiper or guard at the time of the citation. The Secretary has proven there was a violation of the cited standard.

iii. Gravity

The inspector assessed the hazard as unlikely to cause an injury or illness that would result in lost workdays or restricted duty. There were only two clumps of concern that would fall from a lower height and most travel occurs in front end loaders that would protect a person from small clumps of the material. Injuries that could result from this hazard would be muscle strains that would not rise to the level of permanently disabling. The designations are affirmed.

iv. Negligence

The negligence was assessed as moderate, because the condition was not as extensive as that in Citation No. 9688120 and it was difficult to see unless a person was standing underneath the hazard and was looking at the framework. I uphold the negligence as moderate.

E. Citation No. 9688122

i. Summary of Testimony

At the screen six belt catwalk, Inspector Mathisen saw a deep buildup of material 14 to 31 inches deep and 78 inches long. Tr. I-91-92; Ex. 21, 23. While the citation's description of the condition contained different measurements for the hazard, Inspector Mathisen testified at hearing that this was a typo and confirmed the correct measurements. Tr. I-92. The catwalk had one entrance and was used for screen changes and other maintenance activities. Tr. I-92. The area was not roped off and there was no signage to indicate that entry was not permitted. Tr. I-93. The amount of buildup indicated that it existed for a few days. Tr. I-92-93. There were no footprints or other signs that demonstrated a person had accessed the area. Tr. I-128; Ex. 21.

As it was the operator's practice to clean the catwalk first, the inspector determined that the violation was unlikely to cause an injury. Tr. I-94. Slip, trip and fall injuries causing lost workdays or restricted duty were likely to result from this hazard. Tr. I-94. One miner would be affected. Tr. I-95. Because the superintendent informed the inspector that the catwalk had recently been cleaned, the inspector marked the negligence as moderate. Tr. I-95.

While the condition was a hazard, Freeman did not think the material posed an injury risk because miners were trained to shovel first and would not crawl over a pile. Tr. II-29, II-46-47; Ex. 23. He was not aware of any slip, trip, or fall injuries that occurred near this screen. Tr. II-30-31. The catwalk was only accessed occasionally for maintenance and was not used every day. Tr. II-30, II-50. While it would take multiple hours for the material, a fine grit, to accumulate to

the level visible in the photographs taken of the condition, it would take 15 minutes to shovel and clear it, which would occur prior to any maintenance activities. Tr. II-30-31, II-51.

ii. Fact of Violation

On February 27, 2024, Mathisen issued 104(a) Citation No. 9688122, which alleged:

> The Jaw Screen elevated passageway was not kept clean and orderly. There was material built up on the passageway on the north side of the Jaw Screen. The full width of the passageway was covered by material for a total length of about 64 inches. The deepest area of material ranged from about 8 to 21 inches deep, was about 19 inches long and was across the full width of the passageway. The north passageway was used to get from the ladder on the west side of the Jaw Screen to the east side of the Jaw Screen. The Jaw Screen was accessed as needed, on average about once per week. If a miner was to slip, trip, or fall, injuries could occur.

Ex. 21; Tr. I-91-92.2

Mathisen designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.20003(a) that was unlikely to cause an injury that could be expected to result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 10.

30 C.F.R. § 56.20003(a) states that "[w]orkplaces, passageways, storerooms, and service rooms shall be kept clean and orderly."

The catwalk, covered by a substantial amount of material, was not clean and orderly at the time of the citation. I find there was a violation of C.F.R. § 56.20003(a).

iii. Gravity

The hazard was determined to be unlikely to cause an injury that would result in lost workdays or restricted duty. The inspector credited the operator's representation that the catwalk would be cleaned before permitting access. The types of injuries expected from this violation would be consistent with slip, trips, and falls. I affirm these designations.

iv. Negligence

The inspector assessed the negligence as moderate. Based on the amount of material, it would take at least a few days to accumulate, however the operator informed the inspector that the catwalk had been recently cleaned. I uphold that the violation constitutes moderate negligence.

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2 As noted above, this description contains the wrong measurements for the hazard. The correct measurements, as testified to by Inspector Mathisen, are 14 to 31 inches deep and 78 inches long.

F. Citation No. 9688123

i. Summary of Testimony

When Inspector Mathisen examined the screen five belt, it did not have guards or a wiper and there were hardened clumps of material along the belt. Tr. I-96-97; Ex. 27, 28. The inspector believed they could fall, even though the belt was not running. Tr. I-99. Three miners were working in the area that may walk underneath the hazard. Tr. I-97.

The citation was marked as unlikely, as the larger clumps were lower to the ground and the conveyor belt was not running. Tr. I-101. This conveyor belt only operates one or two times a year. Tr. I-101. The inspector marked the severity of injury as lost workdays or restricted duty because he did not believe it would cause permanent injury. Tr. I-101. One miner would be affected because the material would only hit one miner if it fell. Tr. I-101. Finally, the inspector assessed the negligence as moderate, because the buildups were not large and the machine was not operating. Tr. I-101-102.

Freeman did not believe that the hazard could cause lost workdays or restricted duty because the buildup of material was small and there would be no further accumulation of material. Tr. II-40-41. Miners traveling underneath the hazard would be wearing hardhats and safety glasses and would be in a loader or skidsteer. Tr. II-41.

ii. Fact of Violation

On February 27, 2024, Mathisen issued 104(a) Citation No. 9688123, which alleged:

> The 1 ½ inch Feed to Screen 5 Belt has a falling material hazard. The conveyor belt had moderately sized buildups of carryback material including being up to about 12 inches high. This 1 ½ inch Feed to Screen Belt was about 10 to 25 feet high. There was a plant road below this conveyor. It was reported that this conveyor last operated about 5 months ago and typically operated a couple of times per year, each time for a day or two. There are 3 groundman at this mine. If material was to fall and land on a miner, lost workdays or restricted duty injuries could occur.

Ex. 25; Tr. I-96-97.

Mathisen designated the citation as a non- significant and substantial violation of 30 C.F.R. § 56.14110 that was unlikely to cause an injury that could be expected to result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 25.

30 C.F.R. § 56.14110 states that "[i]n areas where flying or falling materials generated from the operations of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons."

I defer to the inspector, who witnessed the conditions when he cited the operator for the violation, regarding the potential of the material to fall and injure someone. Accordingly, I find that a violation has occurred.

iii. Gravity

The inspector assessed the hazard as unlikely to cause an injury or illness that would result in lost workdays or restricted duty. The larger clumps were close to the ground, and the belt was not in operation. The inspector did not think that this hazard would cause permanent injuries. I affirm these designations.

iv. Negligence

The inspector assessed the negligence as moderate, as the buildup was small and the belt was not running at the time of the citation. In addition to these considerations, the belt operates only occasionally. Accordingly, I decrease the negligence to low.

G. Citation No. 9688124

i. Summary of Testimony

Citation No. 9688124 was issued for a housekeeping violation at the crossover belt catwalk between screens two and three. Tr. I-102; Ex. 29. The catwalk provided maintenance access to the underbelt and the screens. Tr. I-103-104. Inspector Mathisen observed the width of the catwalk covered by wet material 9 to 28 inches deep for an extended distance of 20 feet. Tr. I-103; Ex. 31. The inspector estimated it would have taken several weeks to build up. Tr. I-106. It was not barricaded or roped off and did not have signage to warn of the hazard. Tr. I-105-106.

As the catwalk would be cleaned before miners could access it, Inspector Mathisen determined that it would be unlikely for a miner to be injured, and if an injury occurred, it would result in lost workdays or restricted duty from a slip, trip, or fall. Tr. I-107-108. One miner, the person using the catwalk, would be affected. Tr. I-108. The operator's negligence was assessed as moderate, because the catwalk is only accessed infrequently. Tr. I-109.

Freeman testified that the risk of injury is low and this hazard does not constitute moderate negligence. Tr. II-32-33. The catwalk is only accessible via ladder and is used only when planned maintenance activities occur. Tr. II-33, II-50. It would be shoveled before conducting maintenance. Tr. II-51.

ii. Fact of Violation

On February 27, 2024, Mathisen issued 104(a) Citation No. 9688124, which alleged:

> Standard 56.20003(a) was cited 7 times in two years at mine 4503175 (7 to the operator, 0 to a contractor).

> At the 2 and 3 Screen Tower, the Screen 2 and 3 Crossover Belt passageway was not kept clean and orderly. The passageway was covered with material for its full length of about 20 feet and across its full width. Material was particularly built up on the passageway south of the ladder access over a distance of about 56 inches. This material generally ranged from about 9 inches to about 28 inches deep. The 2 and 3 Screen Crossover Belt passageway provided access to the Screen 2 Under Belt and to the Screen 3 Under Belt. It was reported that the Screen 2 and 3 Crossover Belt passageway was rarely accessed, typically during break downs, about once every month and a half to two months. If a miner was to slip, trip, or fall, injuries could occur.

Ex. 29; Tr. I-102-103.

Mathisen designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.20003(a) that was unlikely to cause an injury that could be expected to result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 29.

30 C.F.R. § 56.20003(a) states that "[w]orkplaces, passageways, storerooms, and service rooms shall be kept clean and orderly."

It is obvious that the catwalk was not clean or orderly as its entire width and a substantial amount of its length was covered in material. I affirm that there was a violation of the cited standard.

iii. Gravity

The violation was assessed as unlikely to cause an injury or illness that would result in lost workdays or restricted duty. Access to the area was limited only to maintenance activities. Injuries from slips, trips, or falls would cause lost workdays or restricted duty. I uphold these designations.

iv. Negligence

The inspector determined that the negligence was moderate, considering the catwalk's occasional use and the amount of material. Additionally, there was no sign or barricade to show the presence of hazardous conditions. I affirm the negligence designation.

H. Citation No. 9688125

i. Summary of Testimony

The same catwalk at issue in Citation No. 9688124 was also cited for violating a safe access standard. Tr. I-110-111; Ex. 33. Inspector Mathisen determined that the catwalk did not have structural support aside from a single unattached piece of angle iron. Tr. I-111, I-113, I-138-139; Ex. 37. Without a support beam, the weight of the material on the catwalk caused it to bow in the middle. Tr. I-110-111; Ex. 35. Using an inclinometer, the inspector measured that the

catwalk flexed down five and a half inches. Tr. I-111-113, I-117; Ex. 34. If someone walked on the catwalk, it could collapse, causing that person to fall 16 and a half to 17 feet onto concrete or water. Tr. I-111, I-114.

While the catwalk could collapse, the inspector did not think this likelihood rose to the level of reasonably likely and designated it as unlikely. Tr. I-115. If a person fell, they would hit the ground causing permanently disabling injuries such as paralysis or severe leg injuries. Tr. I-115. One miner would be affected. Tr. I-116. Because the area is not accessed regularly and it would be cleaned prior to accessing it, the negligence was designated as moderate. Tr. 116

Freeman disagreed with the inspector's assessment of the hazard, testifying that the passageway had bracing, including an I-beam, and the severity of injuries would not be permanently disabling. Tr. II-42, II-47; Ex. 37. This area is used to address maintenance and breakdown issues, which are planned events, and shoveling would occur before maintenance work commenced. Tr. II-42, II-44. If there was concern about the passageway falling, it would have been identified. Tr. II-42.

ii. Fact of Violation

On February 27, 2024, Mathisen issued 104(a) Citation No. 9688125, which alleged:

> A safe means of access was not being maintained or provided along the Screen 2 and 3 Crossover Belt passageway. This passageway provided access along the Screen 2 and 3 Crossover Belt, the Screen 2 Under Belt and the Screen 3 Under Belt. South of the ladder access, the travelway had about an 11 foot section that was concave downward. The lowest point was in the middle between pieces of angle iron and sections of the walkway and the lowest point in the middle was on the east side. The drop off was about 17 feet. It was reported that the Screen 2 and 3 Crossover Belt passageway was rarely accessed, typically during break downs, about once every month and a half to two months. If the passageway was to fail and a miner fall, serious injuries could result.

Ex. 33; Tr. I-110-111.

Mathisen designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.11001 that was unlikely to cause an injury that could be expected to be permanently disabling, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 10.

30 C.F.R. § 56.11001 states that "[s]afe means of access shall be provided and maintained to all working places."

The condition was first identified visually by the inspector and measured using an inclinometer to confirm that the passageway was sagging. Even if there was support from an I-beam, as Freeman testified, the catwalk did not provide a safe means of access in that condition. I defer to the inspector, and find that there has been a violation of the cited standard.

iii. Gravity

The inspector determined that the violation was unlikely to cause permanently disabling injuries. As noted in Citation No. 9688124, the catwalk was only accessed infrequently. So, while the catwalk could fall, the inspector did not believe the violation rose to the level of reasonably likely. In the event that someone did fall from the catwalk, impact with the ground would cause permanently disabling injuries. The designations are upheld.

iv. Negligence

The negligence was assessed as moderate. Miners used the catwalk every month and a half to two months and the operator represented that the catwalk is cleaned each time it was accessed. I affirm the negligence as moderate.

I. Citation No. 9688316

i. Summary of Testimony

Inspector Devin Drobny observed material gathering below the lower plant's main feed belt, forming clumps 20 feet above the ground. Tr. I-147-148, I-150; Ex. 39. Smaller pieces of material, which the inspector determined came from the belt, were already on the ground. Tr. I-152; Ex. 42. While he was inspecting the belt, one six-inch chunk fell and broke apart upon hitting the ground. Tr. I-149. While these clumps were wet and broke apart on impact with the ground, the inspector testified that changing conditions could cause the clumps to freeze and lead to more severe injuries. Tr. I-150. The hazard was not taped off, and there were tire marks and boot prints under the belt. Tr. I-151.

As there were multiple clumps spanning across the framework and people traveled through the area, the inspector determined it was reasonably likely to cause an injury that would affect one person. Tr. I-153, I-156. Impact injuries including bruising and minor concussion can result from a clump striking a person. Tr. I-154. The violation was also marked significant and substantial due to its reasonable likelihood of occurrence. Tr. I-156. Wet clumps, like those present during the inspection, could cause lost workdays or restricted duty from injuries such as concussion or bruising, but frozen clumps could cause more severe injuries. Tr. I-154. The negligence was determined to be high, because the operator should have known about the hazard. Tr. I-156-157.

Plant foreman Jarred Braaten did not think that the material could be described as clumps, because it is a fine material and not rock. Tr. II-61. The material is not hazardous, because it consists of sand. Tr. II-61. Further, while there is a road under the belt, it is not used when it is wet. Tr. II-62. Miners do not work under the belt and will only travel in a piece of equipment. Tr. II-61-62.

ii. Fact of Violation

On February 27, 2024, Drobny issued 104(a) Citation No. 9688316, which alleged:

> The main feed belt had several clumps of material that had built up on multiple sections of the truss structure under the belt from the carry back, creating a fall of the material hazard. Miners walk under the belt daily to get to and from the building of the tunnel belt and travel in multiple pieces of mobile equipment including light duty pickups and an open front cab skid steer. Continued vibration would likely make the bonded material continue to fall as approximately 6" clumps were observed falling. Due to the size of the bonded material and the distance of the fall, the impact could exceed the intended protection provided by the hardhats. However, the material was observed breaking apart easily upon impact with the ground, weather conditions may [a]ffect this. The wipers on the belt were not currently maintained and were no longer effective in preventing buildup of material that created this hazard. This conveyor belt was cited in past inspections for the same issues and a falling rock hazard.

Ex. 39; Tr. I-147-148.

Drobny designated the citation as a significant and substantial violation of 30 C.F.R. § 56.14110 that was reasonably likely to cause an injury that could be expected to result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's high negligence. Ex. 39.

30 C.F.R. § 56.14110 states that "[i]n areas where flying or falling materials generated from the operations of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons."

I credit the inspector's testimony regarding his observations of clumps underneath the belt framework 20 feet above the ground and falling material and the impact cold weather conditions may have on the hazard. A violation of the cited standard has occurred.

iii. Gravity

The inspector determined that it was reasonably likely for an injury to occur that would cause a worker to either miss work or perform alternative duties. The inspector also noted that the carryback material extended down a large section of the belt, which was in a busy area people traveled through multiple times per day. I affirm the inspector's designations that the hazard was reasonably likely to cause an injury leading to lost workdays or restricted duty.

The violation was also designated as S&S. I have already found that a violation of a mandatory safety standard has occurred. The standard is meant to protect against the hazard of falling material falling onto a person. Tire tracks and footprints were in the area and the area was a main travel way in the mine. During the inspection, the inspector witnessed a chunk of material fall. These conditions are reasonably likely to cause an injury of a reasonably serious nature. The S&S designation is affirmed.

iv. Negligence

The negligence was assessed as high because management knew or should have known of the material accumulation, the condition was obvious, and this conveyor belt had been cited previously for the same violation. Tr. I-156-157. I affirm the operator's negligence was high, as this was a main roadway and the condition was allowed to persist.

J. Citation No. 9688318

i. Summary of Testimony

Inspector Drobny issued Citation No. 9688318 for built up wet carryback material 15 feet above the ground at the Cone No. 2 feed belt. Tr. I-157-158; Ex. 47. Two clumps one-foot by two-foot in size were identified higher up on the belt. Tr. I-160; Ex. 49. The material was resting on the columns and was not attached to the conveyor belt. Tr. I-161. The belt's vibrations or the freezing and thawing process, which causes contraction and expansion, could cause this material to fall. Tr. I-161. The area was not taped off. Tr. I-164.

The inspector marked the violation as unlikely because the area was infrequently accessed. Tr. I-162. The types of injuries would be impact injuries, bruising, and concussion causing lost workdays or restricted duty. Tr. I-163. As it would be unlikely for the same falling material to strike two people, one person would be affected. Tr. I-163. Because travel in the area was low and it was difficult to see the material on the conveyor belts, the negligence was moderate. Tr. I-164.

Braaten disagreed that the material could injure someone because it was small, fine, and like sand. Tr. II-62-64. Nothing was located under the belt and miners only travel underneath it in a piece of equipment or skidsteer. Tr. II-63.

ii. Fact of Violation

On February 27, 2024, Drobny issued 104(a) Citation No. 9688318, which alleged:

> The #2 cone feed belt had accumulated material that had built up on the truss structure under the belt, creating a fall of material hazard. The accumulated materials was about 2'x1' in size and about 15' high. Other sections of the framework had smaller accumulations and were not as high. The belt did not have a wiper installed to prevent carry back. Foot traffic and tire tracks were observed around the belt. Miners typically travel this area in light duty pickups and an open front cab skid steer. Were this chunk of material to vibrate off the framework and strike a miner[,] serious impact injuries may result in lost work days or restricted duty.

Ex. 47; Tr. I-157-158.

Drobny designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.14110 that was unlikely to cause an injury that could be expected to result in lost workdays

or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 47.

30 C.F.R. § 56.14110 states that "[i]n areas where flying or falling materials generated from the operations of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons."

The inspector in an unequivocal, consistent and compelling fashion credibly testified regarding the hazard posed by the column of material. The belt did not have a guard or wiper and material accumulated that could possibly fall on someone underneath. I find there was a violation of 30 C.F.R. § 56.14110.

iii. Gravity

The inspector assessed the hazard as unlikely to cause an injury or illness that would result in lost workdays or restricted duty because of the exposure to the hazard was limited and the material was only 15 feet high which would cause less severe injuries. The inspector determined this was likely to cause impact injuries such as bruising. I affirm these designations.

iv. Negligence

The negligence was assessed as moderate because of the low travel and the hazard was difficult to see. I affirm the negligence as moderate.

K. Citation No. 9688319

i. Summary of Testimony

At two of the feeding screens at the lower plant, accumulated material under the framework of the belt presented a falling materials hazard. Tr. I-164-165; Ex. 53. Inspector Drobny saw approximately one by two-foot chunks of material could fall due to the vibration of the belt. Tr. I-165-166; Ex. 55. The inspector also witnessed small fragments of material falling. Tr. I-165-166. There were no guards on the belt, however the wipers were working. Tr. I-171; Ex. 54. Areas under the belt were blocked off by piles of cleaned-up material, which demonstrated to the inspector that material may fall on a miner working in the area. Tr. I-167.

He marked the violation as unlikely because while there was a slight chance the material could fall onto a miner, the exposure to the hazard was low. Tr. I-167-168. The hazard would lead to permanently disabling injuries like serious impact injuries, concussions or shoulder injuries. Tr. I-168-169. If the material is frozen, it is less likely to break apart and can cause more serious injuries. Tr. I-169. One person would be affected because the same falling material is unlikely to hit two people. Tr. I-169. Finally, he assigned the negligence as moderate because access to the area was low and the hazard was not readily apparent. Tr. I-169-170.

Braaten did not think the material was a hazard because it is fine and miners do not work or travel under the belt unless they are in protected vehicles. Tr. II-64-65. Wipers were cleaning

the material off. Tr. II-65. When the material is dry, the wiper is not necessary and there are times when installation of a wiper is infeasible. Tr. II-66.

ii. Fact of Violation

On February 27, 2024, Drobny issued 104(a) Citation No. 9688319, which alleged:

> The screen 2&3 feed belts had several clumps of material that had built up on multiple sections of the truss structure under the belt from carry back, creating a fall of material hazard. The large accumulations of material were about 2'x1' in size. Miners travel this area in multiple pieces of mobile equipment including light duty pickups, an open front cab skid steer and occasionally by foot. Continued vibration and weather changes would likely make the bonded material fall. Due to the size of the bonded material and the distance of the fall ranged between 15'-30', the impact could exceed the intended protection provided by hardhats. However, the material was observed breaking apart easily upon impact with the ground.

Ex. 53; Tr. I-164-165.

Drobny designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.14110 that was unlikely to cause an injury that could be expected to result in permanently disabling injuries, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 53.

30 C.F.R. § 56.14110 states that "[i]n areas where flying or falling materials generated from the operations of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons."

There were no guards on the belt and there were chunks of material 15 to 30 feet above the ground. The Secretary has proven that a violation has occurred.

iii. Gravity

The inspector assessed the hazard as unlikely to cause an injury or illness that would result in permanently disabling injuries, including concussions and should injuries. I affirm.

iv. Negligence

The inspector assigned the negligence as moderate because access to the area was low and the hazard was hardly visible. The wiper was not effective at preventing the accumulation of material. I affirm the negligence designation.

L. Citation No. 9688320

i. Summary of Testimony

Inspector Drobny issued Citation No. 9688320 after observing a catwalk providing access to the main feed belt covered with silted materials and rocks greater than 18 inches deep. Tr. I-172, I-175; Ex. 57. There was a chain with a sign across the entrance, however the area was easily accessible by unclipping the chain. Tr. I-174; Ex. 59. The operator informed the inspector that the catwalk was rarely used and there were no footprints or other tracks that would show the area had been accessed. Tr. I-186

The inspector determined that likelihood was unlikely, but the catwalk could still be accessed to repair conveyor belts that wear out regularly. Tr. I-175-176. It would likely cause lost workdays or restricted duty from slip-trip-fall type injuries like strains and sprains. Tr. I-178. One person would be affected, because it was unlikely for multiple people to experience an injury in the same catwalk. Tr. I-178. The inspector did not testify regarding the violation's negligence.

Braaten testified that the catwalk would be cleaned as necessary and miners do not access it unless maintenance was needed. Tr. II-59. There was a sign and chain placed across the entrance. Tr. II-59. He did not think this comprised a hazard because it had not been cleaned as it was not necessary to access the travelway. Tr. II-70, 60.

ii. Fact of Violation

On February 27, 2024, Drobny issued 104(a) Citation No. 9688320, which alleged:

> The main feed belt catwalk entrance was not kept clean and orderly in that material ranging from 18" rocks to fine material had spilled into the travelway. Miners access the catwalk on an as needed basis to access one side of the tunnel belt head pully or the main feed belt tail pully for maintenance and cleaning. This was said to occur during shut down days. Were miners were to access the travelway in this condition they would be exposed to a slip trip and fall hazard that may result in lost work days or restricted duties.

Ex. 57; Tr. I-172.

Drobny designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.23000(a) that was unlikely to cause an injury that could be expected to result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 57.

30 C.F.R. § 56.20003(a) states that "[w]orkplaces, passageways, storerooms, and service rooms shall be kept clean and orderly."

The passageway at issue was covered with rocks and silted material and was not clean and orderly as required by the standard. A violation has occurred.

iii. Gravity

The inspector assessed the hazard as unlikely to cause an injury or illness that would result in lost workdays or restricted duty because the area was infrequently accessed and would cause slip, trip, and fall injuries. The unlikely and lost workdays or restricted duty designations are affirmed.

iv. Negligence

The violation's negligence was assessed as moderate, because, as noted in the citation's description of condition, it was not reported to management and was not a common travel area. Ex. 58. I credit the inspector's notes on the negligence determination and affirm the negligence as moderate.

M. Citation No. 9688324

i. Summary of Testimony

In the MCC, Inspector Drobny issued Citation No. 9688324 for a missing cover plate on an electrical compartment. Tr. I-178-179; Ex. 71, 73. At the time of the citation, there was no indication of the compartment was undergoing testing or repairs, and no one was working in the room. Tr. I-180. According to the cited standard, the cover plate must be in place at all times. Tr. I-180.

The citation was marked as unlikely because there was no indication of damage to electrical components. Tr. I-180-181. The most likely type of injuries to occur would be fire and smoke exposure, shocks, and burns leading to lost workdays or restricted duty for one miner. Tr. I-181. Because the location is commonly used and the condition did not appear to have existed for long, the negligence was assessed as moderate. Tr. I-182.

Braaten testified that the panel is two feet above the ground in the back corner of the MCC. Tr. II-67. It is not easily accessible, as someone would have to get on their hands and knees to access it. Tr. II-67-68. It is also difficult to get a finger inside, and if they did, they would not be able to contact any electrical components. Tr. II-68.

ii. Fact of Violation

On February 27, 2024, Drobny issued 104(a) Citation No. 9688324, which alleged:

> Located in the #3MCC room a[n] electrical panel labeled "cone 5 feed holding relay additional control wires from booth" had an open knockout on the bottom side. No exposed wire nuts or inner conductors were observed through the opening. The #3 CC is accessed monthly for fire extinguisher inspection and for occasional lockout. Missing cover plates can expose wires to damage and could

> expose miners to the possibility of shock and burn injuries that can result in lost work days or restricted duty.

Ex. 71; Tr. I-178-179.

Drobny designated the citation as a non-significant and substantial violation of 30 C.F.R. § 56.12032 that was unlikely to cause an injury that could be expected to result in lost workdays or restricted duty, would affect one miner, and was caused by Respondent's moderate negligence. Ex. 71.

30 C.F.R. § 56.12032 states that "[i]nspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs."

The language of the standard is clear. At the time of the citation, an electrical panel in the MCC was missing a cover plate. There were no signs of repairs or testing on the panel at issue. Accordingly, I find there has been a violation of the cited standard.

iii. Gravity

The inspector assessed the hazard as unlikely to cause an injury or illness that would result in lost workdays or restricted duty. The inspector noted that there were no signs of damage to the panel. I uphold the inspector's assessment of the hazard.

iv. Negligence

The inspector assessed the negligence as moderate because the area is commonly used, the condition was close to the ground, and it had only existed for a short time. I affirm the negligence designation.

IV. PENALTY

It is well established that Commission administrative law judges have the authority to assess civil penalties de novo for violations of the Mine Act. *Sellersburg Stone Company*, 5 FMSHRC 287, 291 (Mar. 1983). The Act requires that in assessing civil monetary penalties, the Commission ALJ shall consider the following six statutory penalty criteria:

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

30 U.S.C. § 820(i).

For Citation No. 9683849, the Secretary proposed a regularly assessed penalty of $147.00. The citation description states that this violation has been cited six times in two years. There is no evidence that the penalty associated with this violation will impact the operator's

ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to result in lost workdays or restricted duty and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. In light of these considerations, I find that the proposed penalty of **$147.00** is appropriate.

For Citation No. 9683850, the Secretary proposed a regularly assessed penalty of $535.00. This standard has been cited six times in two years. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a S&S violation that is reasonably likely to cause permanently disabling injuries and was caused by the operator's high negligence. The operator acted in good faith in abating the violation. In light of these considerations, I increase the penalty to **$1,500.00**.

For Citation No. 9688120, the Secretary proposed a regularly assessed penalty of $797.00. The Secretary did not provide evidence of the violation history of the cited standard. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a S&S violation that is reasonably likely to cause permanently disabling injuries and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. As there is no evidence of the operator's violation history, I lower the penalty to **$717.30**.

For Citation No. 9688121, the Secretary proposed a regularly assessed penalty of $147.00. The Secretary did not provide evidence of the violation history of the cited standard. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to cause lost workdays or restricted duty and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. As there is no evidence of the operator's violation history, I lower the penalty to **$132.30**.

For Citation No. 9688122, the Secretary proposed a regularly assessed penalty of $147.00. This standard has been cited six times in two years. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to cause lost workdays or restricted duty and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. In light of these considerations, I find that the proposed penalty of **$147.00** is appropriate.

For Citation No. 9688123, the Secretary proposed a regularly assessed penalty of $147.00. The Secretary did not provide evidence of the violation history of the cited standard. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to cause lost workdays or restricted duty and was caused by the operator's low negligence. The operator acted in good faith in abating the violation. As there is no evidence of the operator's violation history and a low negligence level, I lower the penalty to **$125.00**.

For Citation No. 9688124, the Secretary proposed a regularly assessed penalty of $147.00. This standard has been cited six times in two years. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to result in lost workdays or restricted duty and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. In light of these considerations, I find that the proposed penalty of **$147.00** is appropriate.

For Citation No. 9688125, the Secretary proposed a regularly assessed penalty of $161.00. The Secretary did not provide evidence of the violation history of the cited standard. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to cause permanently disabling and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. As there is no evidence of the operator's violation history, I lower the penalty to **$144.90**.

For Citation No. 9688316, the Secretary proposed a regularly assessed penalty of $1,773.00. While the citation's description of the condition states that this condition had been cited in the past, no other evidence regarding the timing of frequency was provided. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a S&S violation that is reasonably likely to cause lost workdays or restricted duty and was caused by the operator's high negligence. The operator acted in good faith in abating the violation. As there is limited evidence of the operator's violation history, I lower the penalty to **$1,595.70**.

For Citation No. 9688318, the Secretary proposed a regularly assessed penalty of $147.00. The Secretary did not provide evidence of the violation history of the cited standard. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to cause lost workdays or restricted duty and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. As there is no evidence of the operator's violation history, I lower the penalty to **$132.30**.

For Citation No. 9688319, the Secretary proposed a regularly assessed penalty of $161.00. The Secretary did not provide evidence of the violation history of the cited standard. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to cause permanently disabling and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. As there is no evidence of the operator's violation history, I lower the penalty to **$144.90**.

For Citation No. 9688320, the Secretary proposed a regularly assessed penalty of $147.00. This standard has been cited six times in two years. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to result in lost workdays or restricted duty and was caused by the operator's moderate negligence. The operator

acted in good faith in abating the violation. In light of these considerations, I find that the proposed penalty of **$147.00** is appropriate.

For Citation No. 9688324, the Secretary proposed a regularly assessed penalty of $147.00. The Secretary did not provide evidence of the violation history of the cited standard. There is no evidence that the penalty associated with this violation will impact the operator's ability to continue in business. As discussed above, I find that this is a non-S&S violation that is unlikely to cause lost workdays or restricted duty and was caused by the operator's moderate negligence. The operator acted in good faith in abating the violation. As there is no evidence of the operator's violation history, I lower the penalty to **$132.30**.

V. PARTIAL SETTLEMENT

The parties filed a Joint Stipulation after the hearing, containing the resolution of the three citations settled prior to hearing. The originally assessed amount for these three actions was $843.00 and the settlement amount is $696.00. The settlement includes:

Citation/ Order No.	Originally Proposed Assessment	Settlement Amount	Modifications
9688317	$161.00	$161.00	Affirm as Issued
9688322	$147.00	$0.00	Vacate
9688323	$535.00	$535.00	Affirm as Issued
TOTAL	**$843.00**	**$696.00**	

It is the Secretary's position that the decision to vacate Citation No. 9688322 is an unreviewable exercise of prosecutorial discretion. While the Commission has held that the "Secretary does not possess unreviewable discretion to vacate a contested citation without the Commission's approval under section 110(k) of the Act" when it is part of a settlement, that decision is currently on appeal. *Crimson Oak Grove Resources LLC,* 46 FMSHRC 593, 605 (August 30, 2024). Until such time that the appeals process has been resolved, I defer requiring the parties to support vacatur with an explanation containing facts and circumstances that justify the decision to vacate.

The parties have submitted facts in support of the proposed changes. I have considered the representations and documentation submitted and I conclude that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Act. The motion to approve partial settlement is **GRANTED**, the citations contained in this docket are **MODIFIED** as set forth above.

VI. ORDER

It is hereby **ORDERED** that Citation Nos. 9683849, 9688120, 9688121, 9688122, 9688124, 9688125, 9688316, 9688318, 9688319, 9688320, and 9688324 are **AFFIRMED** as issued, Citation No. 9683850 is modified to increase the negligence to high, and Citation No. 9688123 is modified to decrease the negligence to low. Iron Mountain is **ORDERED** to pay the Secretary the total sum of **$5,908.70** within 40 days of this order.[3]

David P. Simonton
Administrative Law Judge

Distribution: (Electronic and Certified mail)

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[3] 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. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers.