

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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October 25, 2024

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 2024-0057
Petitioner,	:	A.C. No. 36-08484-596662
	:	
	:	
v.	:	
	:	
	:	
HEIDELBERG MATERIALS	:	Mine: Torrance Mine
NORTHEAST, LLC,	:	
Respondent	:	

**SUMMARY DECISION**

Before: Judge Bulluck

This case is before me upon a Petition for Assessment of Civil Penalty filed by the Secretary of Labor (“Secretary”), on behalf of the Mine Safety and Health Administration (“MSHA”), against Heidelberg Materials Northeast, LLC (“Heidelberg”), pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815(d). The Secretary seeks a civil penalty in the amount of \$147.00 for an alleged violation of one of her mandatory safety standards requiring that ventilation plans contain a current mine map showing the direction and quantity of principal air flows. See 30 C.F.R. § 57.8520.

On September 17, 2024, the Secretary filed a Motion for Summary Decision and Memorandum of Points and Authorities in Support of the Acting Secretary’s Motion for Summary Decision (“Secretary’s Motion”), with attached Exhibits A through F.<sup>1</sup> Heidelberg filed a Motion for Summary Decision (“Heidelberg’s Motion”), with attached Exhibits 1 through 5, on September 23.<sup>2</sup>

Based on a thorough review of the cross-motions, I find that there is no genuine issue of material fact. For the reasons set forth below, I conclude that the Secretary is entitled to

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<sup>1</sup> Exhibit F, a copy of Citation No. 9521813, was filed separately on October 1, 2024.

<sup>2</sup> Heidelberg’s September 23, 2024 filing lacks a title; the file name of the pdf document filed in FMSHRC’s eCMS is “Motion for Summary Decision.”

summary decision as a matter of law, affirm the Citation, and assess a penalty against Heidelberg.

## **I. Legal Standard for Summary Decision**

Pursuant to Commission Rule 67(b), “[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.

It is well settled that summary decision is an extraordinary measure and the Commission has analogized it to Rule 56 of the Federal Rules of Civil Procedure, which the Supreme Court has construed to authorize summary judgment only “upon proper showings of the lack of a genuine, triable issue of material fact.” *Hanson Aggs. New York, Inc.*, 29 FMSHRC 4, 9 (Jan. 2007) (citations omitted). When considering a motion for summary decision, the Commission has noted that “the Supreme Court has stated that ‘we look at the record on summary judgment in the light most favorable to . . . the party opposing the motion,’ and that ‘the inferences to be 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.* at 9 (quoting *Poller v. Columbia Broad. Sys., Inc.*, 368 U.S. 464, 473 (1962); *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)). Moreover, Commission Judges should not grant motions for summary decision “unless the entire record shows a right to judgment with such clarity as to leave no room for controversy and establishes affirmatively that the adverse party cannot prevail under any circumstances.” *KenAmerican Res., Inc.*, 38 FMSHRC 1943, 1947 (Aug. 2016) (quoting *Campbell v. Hewitt, Coleman & Assocs., Inc.*, 21 F.3d 52, 55 (4th Cir. 1994)); see *Scott v. Harris*, 550 U.S. 372, 380 (2007) (holding that there is no genuine issue for trial unless a rational trier of fact could find for the nonmoving party).

## **II. Factual Background**

Heidelberg submitted its mine map to MSHA, as required by section 57.8520, on January 30, 2024. Sec’y Mot., Stip. 6. The mine map identifies four entries from the mine to the surface: Main (primary escapeway), M-3 (secondary escapeway), M-13, and M-15. Sec’y Mot., Stip. 7. While Heidelberg’s map shows the direction and quantity of air flow in the Main and M-3 entries, it does not depict the air flows in the M-13 and M-15 entries. Sec’y Mot., Stip. 9. Consequently, on February 27, 2024, MSHA Inspector Justin Griffith issued a 104(a) citation to Heidelberg alleging a violation of section 57.8520(b)(1). Sec’y Mot., Stip. 12.

## **III. Statement of Undisputed Facts**

The parties have stipulated to the following:

1. At all relevant times to this matter, Heidelberg Materials was owner and operator of Torrance Mine, and is an operator, as defined in Section 3(d) of the Federal Mine Safety and Health Act, 30 U.S.C. § 802(d).

2. Torrance Mine is a “mine,” as defined in Section 3(h) of the Mine Act, 30 U.S.C. § 802(h).
3. This proceeding is subject to the jurisdiction of the Federal Mine Safety and Health Review Commission.
4. Citation No. 9855704 was issued and served by an authorized representative of the Secretary of Labor, as required by the Mine Act.
5. A true copy of Citation No. 9855704 was delivered to Respondent, and is attached as Exhibit A.
6. Respondent submitted the annual mine map required by 30 C.F.R. § 57.8520 on or about January 30, 2024.
7. The aforementioned mine map indicates that there are four openings from the mine to the surface: Main, M-3, M-13, and M-15. Main serves as the primary entry and escapeway and contains intake mechanical fan F-5. M-3 serves as the secondary entry and escapeway and contains air outlet F-8.
8. Exhibit B is a map labelled with the aforementioned mine openings.
9. No airflow was shown on the M-13 and M-15 ambient air openings.
10. The M-13 opening had 498,600 cubic feet per minute of air passing through it on or about February 27, 2024, and had similar airflow on or about January 30, 2024. Portal airflow was measured in only one direction.
11. The M-15 opening had 560,160 cubic feet per minute of air passing through it on or about February 27, 2024, and had similar airflow on or about January 30, 2024. Portal airflow was measured in only one direction.
12. MSHA issued Citation No. 9855704 for a violation of 30 C.F.R. § 57.8520(b)(1) on February 27, 2024.
13. MSHA proposed a penalty of \$147 for the aforementioned violation.
14. Respondent timely challenged this penalty.
15. The proposed penalty is appropriate if a violation is found.
16. The proposed penalty will not affect Respondent’s ability to remain in business.
17. Exhibit A to the Petition, attached here as Exhibit C, accurately states the size of the mine and of the controlling entity.
18. Exhibit D, a certified copy of the mine’s citation history, is accurate.

Sec'y Mot. at 2-3.

#### **IV. Findings of Fact and Conclusions of Law**

Inspector Griffith issued 104(a) Citation No. 9855704, alleging a violation of 30 C.F.R. § 57.8520(b)(1) that had “no likelihood” to cause an injury that could reasonably be expected to result in “no lost workdays,” was “non-significant and substantial,” and was due to Heidelberg’s “moderate” negligence. Sec’y Mot., Ex. A. The “Condition or Practice” is described as follows:

Annual ventilation plan/mine map submitted to MSHA for review did not accurately show all required information. The direction and quantity for principal air flows for the M15 and M13 mine openings were not depicted on the Mine Map submitted to MSHA dated 1/30/2024. MSHA air reading taken at location M15 mine opening was measured to have 560,160 CFM. MSHA air reading taken at location M13 mine opening was measured to have 498,600 CFM. The operator failed to accurately depict the principal air flows entering the mine.

Sec’y Mot., Ex. A.

##### **A. Fact of Violation**

The question presented in this matter is whether, under section 57.8520(b)(1), the ambient air flows in entries M-13 and M-15 are “principal,” requiring annotation of their direction and quantity on the mine map submitted with Heidelberg’s ventilation plan. Heidelberg contends that the air flows in M-13 and M-15 are not “principal” because that term refers only to a single, primary air flow, and M-13 and M-15 have ambient air flows that it cannot control. Resp. Mot. at 1. On the other hand, the Secretary takes the position that, based on the overall comprehensiveness of section 57.8520’s requirements and plural usage of “principal air flows” in subsection (b)(1), all significant airflows in entries must be shown on the mine map. Sec’y Mot. at 5. Additionally, the Secretary contends that the air flows in the M-13 and M-15 entries are significant enough to require annotation because their quantities are comparable to those in the primary and secondary entries. Sec’y Mot. at 6.

Section 57.8520, in pertinent part, prescribes that:

A plan of the mine ventilation system shall be set out by the operator in written form. Revisions of the system shall be noted and updated at least annually. The ventilation plan or revisions thereto shall be submitted to the District Manager for review and comments upon his written request. The plan shall, where applicable, contain the following:

(b) The current mine map or schematic or series of mine maps or schematics of an appropriate scale, not greater than five hundred feet to the inch, showing:

(1) Direction and quantity of principal air flows.

30 C.F.R. § 57.8520(b)(1).

No reasonable reading of this standard would construe the meaning of “principal air flows” as being limited only to the primary and/or secondary escapeways. The word “principal” is defined as “most important, consequential, or influential.” *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/principal>, last visited 15 Oct. 2024. Common usage of the term often applies to a set of things that are the most important or consequential. The standard’s usage of “air flows” in the plural sense indicates that multiple consequential air flows can be considered principal. Moreover, when read in the context of section 57.8520 as a whole, the standard makes clear that a mine map is meant to incorporate, comprehensively, the essential elements of a ventilation plan necessary for MSHA to understand and assess how ventilation is achieved in a mine. In addition to the direction and quantity of principal air flows, a mine map must also show the locations of seals isolating abandoned workings; areas withdrawn from the ventilation system; all main, booster, and auxiliary fans; air regulators, stoppings, and ventilation doors; airway crossover devices; known oil and gas wells; known underground adjacent mine openings; permanent underground shops, diesel and oil fuel storage depots, etc.; and significant changes in the ventilation system projected for one year. See 30 C.F.R. §§ 57.8520(b)(1)-(10). The degree of detail to which mine maps require annotation under the broader standard demonstrates that it is meant to be inclusive of all consequential factors affecting ventilation, which, by necessity, would include all significant air flows in openings to the surface, whether mechanical or ambient, as the standard makes no distinction.

Without a detailed and complete schematic of Heidelberg’s ventilation plan, including annotated air flows in all four entries, the mine map would be of limited utility to MSHA, which relies on the accuracy of the maps submitted by the operators to assess the effectiveness of their mine ventilation. See *Original Sixteen to One Mine, Inc.*, 38 FMSHRC 1019, 1039 (May 2016) (ALJ). Additionally, both MSHA and mine operators must know the direction and quantity of consequential air flows in case of mine emergencies, which might require safe evacuation or rescue of miners. Consequently, it would be unreasonable to construe the standard to pertain only to the consequential mechanically generated airflows coursing through the primary and secondary escapeways, to the exclusion of the other entries ventilated by consequential ambient air flows, as Heidelberg argues.

Annotating the direction and quantity of air flows in the M-13 and M-15 entries is essential to a full assessment of Heidelberg’s overall ventilation plan. The air flow readings taken in M-13 and M-15 show significant air intakes of 498,600 and 560,160 cfm, respectively. Sec’y Mot., Stips. 10, 11. These airflows are significantly greater than the 245,025 cfm of the mechanically generated airflow in the Main entry, and comparable to the 647,606 cfm of mechanically generated air flow in the M-3 entry, as annotated on Heidelberg’s mine map. Sec’y Mot. at 1. Furthermore, their importance to the ventilation plan is in no way diminished by the fact that these significant air flows are ambient, rather than mechanical, especially in light of the standard’s myriad requirements.

Accordingly, I find that the air flows in the M-13 and M-15 entries are included within the set of “principal air flows,” and that Heidelberg violated section 57.8520(b)(1) by failing to annotate their direction and quantity on its January 2024 mine map.

## B. Gravity and Negligence

The Secretary has assessed the gravity of the violation as “no likelihood,” “no lost workdays,” and “non-significant and substantial.” Sec’y Mot., Ex. A. Furthermore, the Secretary has determined that this violation constituted a documentation error, and that there was no evidence that omission of the M-13 and M-15 entry airflows presented any immediate or potential safety hazard under the mine’s conditions. Sec’y Mot. at 6-7. Because I agree with the Secretary’s assessment, that this paperwork violation posed no immediate or potential hazard, I sustain her gravity designations.

The Secretary has assessed the negligence of the violation as “moderate.” Sec’y Mot., Ex. A. However, Heidelberg contends that MSHA’s failure to cite the same map deficiencies in previous years created a reasonable belief that annotating the airflows in the M-13 and M-15 entries was not required. Resp. Mot. at 1-2. The Secretary’s Part 100 Penalty Table defines “moderate negligence” as “the operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.” 30 C.F.R. § 100.3(d). While Heidelberg’s reliance on MSHA’s previous lack of enforcement is mitigating, I find that its failure to comply with the clear meaning of the standard constitutes ordinary negligence. Therefore, I sustain the Secretary’s moderate negligence designation.

## V. Penalty

While the Secretary has proposed a regularly assessed civil penalty of \$147.00, the Judge must independently determine the appropriate assessment by proper consideration of the six penalty criteria set forth in section 110(i) of the Mine Act, 30 U.S.C. § 820(i). See *Sellersburg Stone Co.*, 5 FMSHRC 287, 291-92 (Mar. 1983), *aff’d* 736 F.2d 1147 (7th Cir. 1984).

Applying the penalty criteria, I find that Heidelberg is a large operator, with no prior violations of section 57.8520(b)(1) in the 15 months prior to this violation, and that it had an overall violation history that is a mitigating factor in assessing an appropriate penalty. Sec’y Mot., Stips. 17, 18; Ex. D. I also find that the proposed penalty will not affect Heidelberg’s ability to continue in business, and that Heidelberg demonstrated good faith in achieving rapid compliance after notice of the violation. Sec’y Mot., Stip 16. The remaining criteria involve consideration of the gravity and negligence of the violation. I have found that this paperwork violation had no likelihood to result in a lost-workdays injury, and that Heidelberg’s negligence was moderate. Accordingly, I find that a penalty of \$147.00, as proposed by the Secretary, is appropriate.

## VI. Order

**ACCORDINGLY**, the Secretary's Motion for Summary Decision is **GRANTED**, Respondent’s Motion for Summary Decision is **DENIED**, and it is **ORDERED** that Heidelberg Materials Northeast, LLC **PAY** a civil penalty of \$147.00 within 30 days of the

date of this Decision.<sup>3</sup>



Jacqueline R. Bulluck  
Administrative Law Judge

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<sup>3</sup> Payment should be made 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.