FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner v. THE NATIONAL LIME AND STONE COMPANY, Respondent	CIVIL PENALTY PROCEEDING Docket No. LAKE 2024-0064 A.C. No. 33-04782-588320 Mine: Metso Lokotrack Crusher

DECISION AND ORDER

This case is before me upon a Petition for the Assessment of Civil Penalty, filed by the Secretary of Labor through her Mine Safety and Health Administration ("MSHA"), against The National Lime and Stone Company ("National" or "Respondent"). Pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 ("Mine Act" or "Act"), 30 U.S.C. § 815(d), National is contesting all three citations that are the subject of the assessment, for each of which the Secretary and MSHA seek a penalty of $143.00. Each citation charges a violation of a Mine Act safety or health standard that the Secretary seeks to enforce against National as the operator of the "mine" that MSHA cited in this case: National's Metso Lokotrack Crusher ("Portable Crusher"), equipment that National deploys and uses at more than one of multiple MSHA-regulated surface metal-nonmetal mines it controls and operates in Ohio.[1]

I. PROCEDURAL HISTORY

After being unable to settle the case, the parties requested I decide it without a hearing, based on a stipulated record and cross-motions for summary decision. I subsequently issued a Scheduling Order on April 9, 2024, pursuant to which the parties submitted their Stipulated Record of Undisputed Facts ("Stip.") on May 31, 2024, consisting of 32 stipulations and 13 exhibits.

[1] The citations allege that National failed to comply with: (1) 30 C.F.R. § 47.31(a), when it failed to adopt and implement a written hazard communication program for the Portable Crusher; (2) 30 C.F.R. §§ 46.3-46.4, when it failed to develop and effectuate for the Portable Crusher a written training plan that covers new miners, newly hired experienced miners, and related training requirements; and (3) 30 C.F.R. § 56.18002(d), when it did not document or maintain records of workplace examinations of the Portable Crusher.

While the parties' competing motions for summary decision were originally due June 28, their request that day to extend the due date to accommodate either's potential need to address the Supreme Court's June 28 decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244, 2257-73 (2024), was granted. The motions were then filed on August 8 and response briefs were to be filed by September 6.

On September 4, the Secretary filed an unopposed motion to extend the time for response briefs, citing Respondent's reliance on the *Loper Bright* decision in its motion for summary decision. The Secretary requested that further briefing in this proceeding not be due until shortly after supplemental briefing was scheduled to conclude before the U.S. Circuit Court of Appeals for the District of Columbia in *Secretary of Labor v. KC Transport, Inc*., D.C. Cir. No. 22-1071. Back on July 2, the Supreme Court vacated the D.C. Circuit decision and judgment in that case and remanded it for further consideration in light of *Loper Bright*. *See K.C. Transport, Inc. v. Su*, 144 S. Ct. 2708 (2024).

At issue in *KC Transport* are citations issued by MSHA to a contractor in connection with the trucking service that it provided at a mine subject to the Mine Act. Given that both cases involve treatment under the Mine Act of equipment that moves to and from mine locations, I granted the motion for extension, and response briefs were filed on November 12, 2024. *See* S. Mem. of Points & Authorities in Opp. to Resp't's Mot. for Summ. Dec. ("S. Resp. Br."); Nat'l's Resp. to S.'s Mot. for Summ. Dec. ("Nat'l Resp. Br.").

This Decision has been reached after careful consideration of the motions, stipulated record, exhibits, and arguments advanced by the parties. And, for the reasons below, I deny National's motion, grant the Secretary's motion as to one of the citations (and assess a penalty of $143.00 for it), and vacate the other two citations.

II. PARTIES' STIPULATIONS ON FACTS AND EXHIBITS SUBMITTED

The parties agreed to the factual background to the case, according to their numbered stipulations, as follows:

A. Overview of National's Mining Operations

4. National has been in business since 1903 and is headquartered in Findlay, Ohio. National owns and operates numerous limestone aggregate and sand and gravel surface mining operations throughout Ohio.

5. Aggregate processing at National's quarries is completed with the use of stationary and portable processing equipment. While some primary crushers are stationary, many of them are mounted on wheels that can allow the crushers to be moved intermittently as the mining face progresses across the quarry floor. Secondary crushers, screens and conveyors also range from wheeled, track-mounted, skid-mounted, or stationery and the processing plants throughout the Company may incorporate any of those types of equipment in the various processing lines. While any specific piece of processing equipment can be moved from one mine site to another depending on production needs, some portable equipment is moved on a more regular basis to

increase production of certain products, resize existing products from storage piles, or change volumes of different sizes within a processing line, however, these moves are always between existing mine sites that already [each] have [a mine identification number ("Mine ID") issued by MSHA].

24. At all material times involved in this case, the products of the Portable Crusher entered commerce, or the operations or products thereof affected commerce, within the meaning and scope of Section 4 of the Mine Act, 30 U.S.C. § 803.

B. MSHA's Position on National's Portable Equipment

6. In April 2022, National was advised by Carl Graham, Supervisor, Hebron MSHA Office, that portable crushers and screens [each] need [their own] Mine IDs if they are [to be] moved between mine sites and referred Respondent to MSHA's Program Policy Manual on Portable Operations.

28. Exhibit 9 [to the Stipulations] is a true copy of the MSHA Program Policy Manual, Part 41, Sections III.41-1 and III.41-2.

C. The Portable Crusher

7. National purchased a Metso Lokotrack LT300HP Crusher (Asset # 10439) ("Portable Crusher") in 2022. According to the manufacturer, the Portable Crusher "can be used as a secondary or tertiary crusher in a multistage crushing and screening processes. It is mounted on tracks and can be easily moved inside a quarry and transported between sites on a low bed truck." *See* https://www.metso.com/portfolio/lokotrack-lt-series/lokotrack-lt300hp-mobile-conecrusher/ (last visited May 9, 2024).

8. A photograph of the Portable Crusher is attached as Exhibit 1 [to the Stipulations].

9. Pursuant to the directive given by MSHA in April 2022, National submitted a Mine ID request for the Portable Crusher. The Portable Crusher was assigned Mine ID # 33-04782.

D. National's Pre-Citation Use of the Portable Crusher

10. The Portable Crusher entered service on August 31, 2022, at National's surface limestone mine in Ottawa, Ohio (Mine ID # 33-00145) ("Ottawa Plant"), as part of Respondent's secondary mining process.

11. On or about February 3, 2023, National moved the Portable Crusher to its surface limestone mine in Findlay, Ohio (Mine ID # 33-04121) ("Findlay Plant"). National gave notice of that relocation to the Ohio Environmental Protection Agency, Division of Air Pollution Control.

12. National operated the Portable Crusher as part of the Findlay Plant's secondary mining process.

E. MSHA June 2023 Inspection of the Findlay Plant

13. On June 14 and 15, 2023, Britton Cloyd, an MSHA Federal Mine Inspector, conducted a regular safety and health inspection of the Findlay Plant.

14. In connection with the inspection of the Findlay Plant, MSHA issued a citation to National for not having electrical conductors of sufficient size and capacity, in violation of 30 C.F.R. 56.12004, and a citation for failing to make available a record of the testing of the resistance of grounding systems, in violation of 30 C.F.R. 56.120[28]. The penalty for each violation was $143.00, which Respondent paid.

F. MSHA June 2023 Inspection of the Portable Crusher

15. On June 14, 2023, while inspecting the Findlay Plant, Inspector Cloyd saw that National was operating the Portable Crusher and conducted a separate regular safety and health inspection of the Portable Crusher.

16. On June 14, 2023, MSHA issued three Mine Citations/Orders—Nos. 9717264, 9717265, and 9717266—to National concerning the Portable Crusher.

G. The Three Citations

17. Citation/Order No. 9717264 states that National had not developed and implemented a written [Hazard Communication ("]Hazcom["")] program for the Portable Crusher as required by 30 C.F.R. 47.31(a). The proposed penalty for this citation is $143.00. See Citation # 9717264, Exhibit 2.

18. At the time of the June 2023 MSHA inspection, National had developed and implemented a written Hazcom program for the Findlay Plant as required by 30 C.F.R. 47.31(a). Hazcom Communication Program for Findlay Plant, attached as Exhibit 3. However, National had not developed and implemented a separate Hazcom program for the Portable Crusher.

19. Citation/Order No. 9717265 states that National did not develop and implement a written training plan for the Portable Crusher that contains effective programs for training new miners, newly hired experienced miners, training for new tasks, annual refresher training, and site-specific hazard training as required under 30 C.F.R. 46.3 and 46.4. The proposed penalty for this citation is $143.00. Citation # 9717265, Exhibit 4.

20. At the time of the June 2023 MSHA inspection, National had developed and implemented a written training plan for the Findlay Plant that contained effective programs for training new miners, newly hired experienced miners, training for new tasks, annual refresher training, and site-specific hazard training as required under 30 C.F.R. 46.3 and 46.4. National Part 46 Training Plan, attached as Exhibit 5; National Part 46 Task Training Info, attached as Exhibit 6. However, National had not developed a separate written training plan for the Portable Crusher.

21. Citation/Order No. 9717266 states that a written record of workplace examinations for the Portable Crusher was not available for review by MSHA as required by 30 C.F.R. 56.18002(d). The proposed penalty for this citation is $143.00. See Citation # 971726[6], attached as Exhibit 7 [to the Stipulations].

22. At the time of the June 2023 MSHA inspection, National had conducted daily workplace examinations at the Findlay Plant of each working place at least once each shift before miners began work in those places, including the secondary mining process where the Portable Crusher was integrated. National kept a written record of said examinations and made those records available during the June 2023 MSHA inspection. Select Daily Workplace Examinations, attached as Exhibit 8, pp. 1-2 [of the Stipulations].

23. However, at the time of the 2023 MSHA inspection, National had not kept a written record of workplace examinations specifically for the Portable Crusher. National began keeping such a separate record for the Portable Crusher after the June 2023 MSHA inspection. *Id.* at p. 3.

H. Post-Citations Move of the Portable Crusher

27. In March 2024, National relocated the Portable Crusher from the Findlay Plant to the Ottawa Plant.

III. THE CROSS MOTIONS FOR SUMMARY DECISION

In her motion for summary decision, the Secretary argues that summary decision affirming all three citations and proposed penalties is mandated here because National does not contest that, at the time the citations issued, its Portable Crusher did not meet the requirements of the standards cited in the citations (Stip. Nos. 18, 20, 23). According to the Secretary, the violations were citable as to the Portable Crusher, because the Portable Crusher was, at that point, indisputably "equipment" being used in the "milling" of minerals that National mined from the ground (Stip. Nos.4, 7, 11), and thus constituted "a coal or other mine" as that term appears in section 104(a) and is defined in section 3(h)(1) of the Act, 30 U.S.C. § 802(h)(1). S. Mot. at 5-9.

In its motion for summary decision, National takes the position that this is less a Mine Act jurisdictional dispute and more of one over whether the Act permits MSHA to treat equipment, such as the Portable Crusher, as a stand-alone "mine," separate from the plant locations at which it is used. Nat'l Mot. at 3. National, focusing on the Mine Act's text and structure, along with relevant MSHA regulations, argues that, under the best reading of the Mine Act, MSHA may issue a mine identification number ("Mine ID") only to a "mine operation," which the Portable Crusher, by itself, is not. National thus maintains that MSHA lacks and lacked authority to issue a separate Mine ID for the Portable Crusher. Additionally, National argues that it should not have to meet Mine Act obligations solely for the Portable Crusher, given that it already complies with safety and health standards at the National plant where the Portable Crusher is being used. *Id*. at 6-13. National also contends that the Secretary, by taking the position she is in this case, is unreasonably burdening mine operators by requiring unnecessary

duplication of effort, records, reports, programs, and inspections, in contravention of the terms of section 103(e) of the Act, 30 U.S.C. § 813(e). *Id.* at 14.

IV. DISPOSITION

A. Standard for Summary Decision

Under 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(b). The Commission has instructed that:

> Summary decision should not be granted "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) (internal quotations omitted). Summary decision is appropriate only if there are no material facts in dispute and the movant's position is entitled to judgment as a matter of law. *West Alabama Sand & Gravel, Inc.*, 37 FMSHRC 1884, 1886-87 (Sep. 2015).

M-Class Mining, LLC, 41 FMSHRC 579, 582 (Sept. 2019); *see also John Richards Constr.,* 39 FMSHRC 959, 960 (May 2017) ("The Commission has long analogized summary decision to summary judgment under Rule 56 of the Federal Rules of Civil Procedure, ...") (citing *KenAmerican*, 38 FMSHRC at 1946); *Energy West Mining Co.*, 16 FMSHRC 1414, 1419 (July 1994)).

When, as in this case, cross-motions for summary decision are submitted, each motion must be considered separately and on its own merits. *Hanson Aggregates New York, Inc.*, 29 FMSHRC 4, 10 (Jan. 2007). I will address National's motion first, as it is based on far broader grounds than the Secretary's motion.

B. National's Motion for Summary Decision

National states that it "readily agrees jurisdiction" over it under the Mine Act "exists, and the Secretary could certainly cite National, for example, for any safety violation relating to the Portable Crusher (if any existed)." Nat'l Br. at 15 n.5. National maintains that in this case, however, the issue is "whether a piece of mining equipment requires a separate Mine ID, a separate legal identity report, and separate regulatory compliance from the mine upon which it is located and used." *Id.* at 6 (citations omitted). Arguing that the Mine Act and its implementing regulations cannot be interpreted to support such an approach to mine and health safety enforcement by MSHA, National attacks MSHA's portable plant regulatory program, both as it exists overall and as it is being applied in a case such as this, in which the portable plant travels only to sites that have their own Mine ID's. I will address National's broader arguments before addressing the latter.

1. MSHA's Treatment of Portable Plants as "Mines"

The Secretary in her response brief provides a helpful background on how MSHA accomplishes the inspection of certain equipment, such as the Portable Crusher, that may move between different mining sites and operations. After asserting that "MSHA has the statutory authority to inspect and cite any land, road, or other equipment so long as it is a 'mine as broadly defined by 30 U.S.C. § 802(h)(1)," the Secretary explains that:

> MSHA does not and cannot provide advance notice of the inspection to the operator. 30 U.S.C. § 813(a). To carry-out unannounced inspections and determine whether an imminent danger exists, MSHA must know where the mines are located. Accordingly, mine operators are required to provide MSHA with the name and address of the mines they operate. 30 U.S.C. § 819(c). In furtherance of these statutory mandates, MSHA requires mine operators within 30 days of opening a new mine to provide MSHA with the name and address of the mine, the Federal mine identification number and the name and address of the person at the mine in charge of health and safety. 30 C.F.R. § 41.11. If there are any changes to this information (including the address of the mine), the operator has 30 days to notify MSHA. *Id.* at § 41.12.

S. Resp. Br. at 3-4. To obtain the Mine ID that a nascent operator must include on its notification of legal identity that 30 C.F.R. § 41.20 requires it to file with MSHA, the operator must first complete and submit to the agency Form 7000-51, Mine Operator Identification Request (Mar. 2022). *See* https://www.msha.gov/sites/default/files/ Support Resources/Forms/7000-51_3.pdf.

Through its Program Policy Manual ("PPM"), MSHA has issued guidance with respect to the assignment of a Mine ID. MSHA III Program Policy Manual 41 (Release III-32 Jan. 2014). *See* Stip. No. 28 & Ex. 9. "Portable Operations" are covered in III.41-2:

> When a mine operator has a portable plant which operates in several different locations, the mine identification number is to be assigned to the plant only and not to the pit. Mine operators will need to submit only one legal identification form for each portable plant. Quarterly employment information will be reported on one Form 7000-2, regardless of the number of pits the plant may operate during the quarter. For administrative purposes, the portable plant will be given one permanent mine name (for example, ABC Plant #1) even though it might be operating in different locations during the course of the year. The operator will use the home office address on the legal identification form. This will be the address for all MSHA-related correspondence.

> Consistent with other surface mining entities, the portable plant will receive inspections in accordance with the statutory schedule. Such inspections are expected to occur at locations where the portable plant is functioning.

Ex. 9 at 1-2.[2]

National contends that the PPM conflicts with the Mine Act and MSHA's regulations, because it "divorc[es] the plant from [its] location." Nat'l Mot. at 12. According to National, "the best reading of the Mine Act" does not support treating a portable plant as if it were an entire mine. Nat'l Mot. at 8 (citing *Loper Bright*, 144 S. Ct. at 2266).

I reject National's position that MSHA's exercise of jurisdiction over any "portable plant" is inconsistent with the Mine Act. I find National's arguments to be largely based on a misunderstanding of the usual circumstances in which MSHA asserts such jurisdiction, albeit circumstances which I appreciate may not be entirely present here.[3]

National first objects to MSHA's portable plant regulatory program on the ground that it is inconsistent with the terms of the Mine Act as those terms have been interpreted by at least one reviewing court. National looks to section 109 of the Mine Act, 30 U.S.C. § 819, which addresses administrative and reporting obligations. MSHA implements section 109's requirements through 30 C.F.R. Part 41. It is pursuant to these provisions that MSHA required that National file a 30 C.F.R. § 41.20 legal identity report for the Portable Crusher after obtaining a Mine ID for it. S*ee* Nat'l Mot. at 6, 8-9.

The section 109 and Part 41 requirements are imposed upon each "operator" of "a coal or other mine." These specific terms are defined in section 3 of the Mine Act, 30 U.S.C. § 802. The

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[2] As background, I note that, little more than a year ago, the Department of Labor's Office of Inspector General released the results of an audit, in which it concluded that there have been difficulties with MSHA's program for inspecting mines that operate only intermittently, including mines categorized as "portable." *See* Report No. 19-24-001-06-001, at 10 (issued Oct. 17, 2023).

[3] There is notable Commission and court precedent on the process of raising an objection to having to satisfy one or more of the 30 C.F.R. Part 41 requirements. A party can refuse to do so, take a technical citation under the Act, comply with the requirements to abate the citation, and then contest the citation. *See, e.g., D.H. Blattner & Sons, Inc.*, 18 FMSHRC 1580, 1582-83 (Sept. 1996) (upholding three citations, each assessed at a minimum penalty, alleging violations of 30 C.F.R. 41.20's legal identity report filing requirement by an independent contractor, on the ground that, at three separate mining operations, the contractor was actually performing services that established it as an operator, in part, of the mines), *aff'd* 152 F.3d 1102 (9th Cir. 1998).

National did not do so in this instance with respect to its Portable Crusher. Instead, it met the Part 41 requirements and only now challenges MSHA's portable plant regulatory program after having received citations from MSHA issued with respect to the Portable Crusher under its Mine ID.

terms are controlling in this case because MSHA, pursuant to section 104(a) of the Act, 30 U.S.C. § 814(a), issued the subject three citations to National as the undisputed "operator," of the Portable Crusher. Stip. No. 3.

Section 3(d) of the Act defines "operator" as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine." 30 U.S.C. § 802(d). In turn, "coal or other mine" is described in section 3(h)(1) of the Act as encompassing in pertinent part:

> (A) *an area of land from which minerals are extracted* . . . , (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, *equipment, machines*, tools, or other property . . . , on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits . . . or *used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals*, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment.

30 U.S.C. § 802(h)(1) (emphases added). Part 41 sets forth the same definitions. *See* 30 C.F.R. § 41.1(a) & (c).[4]

As for the term "equipment" as it appears in section 3(h)(1)(C), the Secretary has long taken the position that almost *any* equipment used or to be used in mining processes is subject to the Mine Act, regardless of whether it is located on or around a subsection (A) extraction area, a subsection (B) road, used in a subsection (C) mining process, or otherwise. Until recently, the Commission upheld the Secretary's interpretation. *See, e.g., Jim Walter Res., Inc.*, 22 FMSHRC 21 (Jan. 2000) ("*JWR*") (finding mining company's central supply and machine shops that served multiple of its mines from a location away from any extraction area or mine operations subject to Mine Act).

The Secretary's position has not always been accepted by reviewing courts, however, including at least one that may eventually hear an appeal in this case, should review be sought pursuant to 106(a)(1) of the Act, 30 U.S.C. § 816(a)(1). In fact, both courts that could hear such an appeal—the United States Courts of Appeal for the Sixth and District of Columbia Circuits—have ruled on whether Mine Act jurisdiction attaches under subsection (C) at locations outside of

[4] Under the Mine Act, National is thus also the "operator" of its Findlay Plant, where the Portable Crusher was located at the time MSHA issued the three citations. As a surface limestone mine, the Findlay Plant is indisputably a "coal or other mine" subject to the Mine Act under section 3(h)(1)(A) & (C). The quarry there is "an area of land from which minerals are extracted," and the Findlay Plant's operations include "equipment" and "machines" used in various mining processes, including milling. *See* Stip. No. 5.

where mine operations are being conducted. Here, National cites opinions in both of those cases as authority for placing a limit on the reach of "coal or other mine" as that term is used in section 109(d) of the Act. Nat'l Mot. at 7-8.[5]

At issue in the first case decided, *Maxxim Rebuild Co. v. FMSHRC*, 848 F.3d 737 (6th Cir. 2017), was MSHA's assertion of Mine Act jurisdiction over, and consequential issuance for citations for alleged health and safety violations at, a mining company-owned shop that made and repaired mining equipment. The court reversed a Commission decision and held that the shop's functions and the equipment stored there did not sufficiently qualify the shop and the equipment under the section 3(h)(1) definition of "coal or other mine," because the shop was located geographically distant from where any process of a working mine was conducted. According to the *Maxxim* court, section 3(h)(1)(C) "limit[s MSHA]'s jurisdiction to locations and equipment that are part of or adjacent to extraction, milling, and preparation sites." *Id*. at 744. Accordingly, the court overruled *JWR*. *Id.*

The later D.C. Circuit case, *KC Transport*, involved citations issued by MSHA to a contract trucking company for alleged Mine Act safety standard violations with respect to one of the company's trucks parked just outside the mine site property at which the truck provided service. 77 F.4th 1022, 1024 (D.C. Cir. 2023). The court's panel majority disagreed with the dissent and refused to follow *Maxxim* and interpret Mine Act jurisdiction under section 3(h)(1)(C) over facilities and equipment as dependent upon their location relative to actual mining operations. *Id.* at 1031-33.

National cites the dissent in the original *KC Transport* decision, which relied upon *Maxxim*, as additional authority in reading section 109's use of "coal or other mine." Nat'l Mot.

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[5] Section 109(d) provides:

> Each operator of a coal or other mine subject to this Act shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal or other mine subject to this Act shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, citation, or decision issued under this Act affecting such mine. In any case where the mine is subject to the control of any person not directly involved in the daily operations of the coal or other mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal or other mine subject to the control of such person, and such official shall receive a copy of any notice, order, citation, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

30 U.S.C. § 819(d).

at 14-15. As mentioned, that decision has been vacated, so the question of the proper interpretation of section 3(h)(1) is presently back before the court, with oral argument on remand scheduled for January 24, 2025. Thus, the dissent's view that "coal or other mine" should be interpreted as held by the *Maxxim* court may still ultimately prevail in the case.

According to National, the *Maxxim* decision mandates that, under section 109(d) of the Act, individual equipment cannot be viewed separately from the rest of the constituent parts of a mine to, by itself, meet the definition of "coal or other mine." Thus, National maintains that a portable plant cannot be treated as a stand-alone "mine." National cites several Commission cases it views as consistent with that proposition. *See* Nat'l Resp. at 6-8.

In my opinion, National misreads the Commission caselaw. In fact, the cases in large part explain MSHA's claim of jurisdiction over portable plants. That is because there are instances in which the presence of such a plant provides the basis for MSHA's conclusion that mining activities under the Mine Act are occurring at a location, and that location should thus be considered to be a "mine" at that time.

For instance, in *State of Alaska, Dep't of Transp.*, 36 FMSHRC 2642 (Oct. 2014), MSHA required a portable "SAG Screener" to have a Mine ID as a portable plant. In that case, while there was the potential for the screener to be used at as many as 40 different road maintenance pits previously established along a road running hundreds of miles, MSHA did not treat any pit, by itself, as a mine. Because the agency considered the presence of the screener to be necessary for future mine operations to be conducted in and around a pit, MSHA issued a Mine ID to the screener only, and not one to a pit. *Id*. at 2643.

Similar circumstances were presented in *Konitz Contracting*, 15 FMSHRC 1984, 1986-87 (Sept. 1993) (ALJ). In that case "Portable Crusher #2" was the "mine" cited, because it would travel to and operate at various remote locations that would not otherwise be considered to be mines, including in the "middle of a field on a private ranch." That was the crusher's location when it was cited, under its own Mine ID, for violating an MSHA safety standard. *See also North Idaho Drilling, Inc.*, 35 FMSHRC 2472, 2474-75 (Aug. 2013) (ALJ) (upholding MSHA's authority to issue multiple citations to the operator of portable "Crusher #1" under the equipment's MSHA-issued Mine ID, because the circumstances surrounding its presence at a location known as "the Wemhoff Pit" established that the potential operation of the crusher there would meet the definition of "coal or other mine"). In each of the foregoing cases, mining operations were not considered to be taking place until such time that the portable plant arrived at the geographic location.

With that as background, MSHA's treatment of certain portable plants as "mines" is better understood. However, like the court in *Maxxim*, National nevertheless contends if individual pieces of mine equipment or machinery qualify as "a coal or other mine," it could lead to the absurdity of "each piece of mining equipment (and every single tool)" being required to have its own Mine ID and legal identity report, and to comply with health and safety requirements, including record-keeping." Nat'l Mot. at 8.

I agree that would be an absurd result, but the PPM states that MSHA only requires "[e]ach underground mine and each surface mine [to] have separate" Mine ID's, and that otherwise MSHA "will have to decide on a case-by-case basis whether operations related or independent for the purpose of assigning" Mine ID's. PPM at III.41-1 ("Assignment of Independent Contractor and Mine" ID's). Moreover, Commission cases disclose no desire on the part of MSHA to apply its statutory interpretation in such a fashion. Instead, MSHA has only done so with respect to a limited type of equipment or machinery.[6]

Such an interpretation is not only supported by the language of section 3(h)(1) of the Act, but the Mine Act's legislative history as well. In it, Congress made it clear "that what is considered to be a mine and to be regulated under this Act be given the broadest possibl[e] interpretation, and it is the intent of this Committee that doubts be resolved in favor of inclusion of a facility within the coverage of the Act." S. Rep. No. 95-181, at 14 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 602 (1978) ("*Legis. Hist*."). Accordingly, the Commission has consistently construed section 3(h)(1) broadly in favor of Mine Act coverage. *E.g., Calmat Co. of Arizona*, 27 FMSHRC 617, 622, 624 (Sept. 2005).

In any event, I consider neither *Maxxim* nor the dissent in *KC Transport* persuasive authority on how section 109 should be interpreted with respect to MSHA's portable plant regulatory program. At issue in those cases was equipment and facilities that were located a substantial distance from where mining processes were occurring. In contrast, at the time the three citations here were issued with respect to the Portable Crusher, and in the previously discussed Commission cases, the portable plant was located both in or near extraction lands and where it could be used in the mining operations described in section 3(h)(1)(A) & (C). Thus, in this case, there is not the same factual basis for a "location" oriented interpretation of "coal or other mine" that there was in the two court cases.[7]

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[6] In her initial brief on remand in *KC Transport*, the Secretary explained to the court that dredges and mobile or portable coal auger and highwall mining operations are mining equipment which, like portable plants, may move between locations and thus are required to obtain their own Mine ID's. Sec'y Suppl. Br. at 14-15; *see also* S. Resp. at 10 ("MSHA does not impose a Mine ID requirement only on portable crushers, but also requires them for dredgers and augers that move between mines. Dredgers and augers also perform mining operations like a portable crusher.").

[7] In addition, as is mentioned in the PPM, MSHA states that its intention is to inspect portable plants only at locations where there is the potential for them to be used in mining. In other words, at a location that National does not contest falls within the statutory definition of "coal or other mine."

National also maintains that section 109(a), with its references to offices and bulletin boards "[a]t each coal or other mine,"[8] is best read to foreclose application of the Act to portable plants. Nat'l Mot. at 11. In my opinion, the Secretary adequately answers this in her response, where she details how the terms of section 109(a) are accommodated to portable plants. *See* S. Resp. at 8.

In any event, the alternative implicit in National's arguments against any portable plant being treated as "a coal or other mine" is to instead have MSHA regulate each location the plant could travel to as the "mine." As seen, that could often result in an unnecessary multiplication of locations subject to section 109 and Part 41. I fail to see how such a result would establish National's approach as the "best reading" of the Mine Act.

2. Whether the Portable Crusher Qualifies as a "Coal or Other Mine"

National has better arguments that the Portable Crusher, because it is only used in National operations at plants with their own Mine ID's, should not be separately treated as a "mine" under the Act. National maintains that MSHA asserting jurisdiction over the Portable Crusher as a stand-alone mine is unjustified in these circumstances, because its mines are already potentially subject to the full panoply of administrative, health, and safety requirements. *See* Nat'l Mot. at 10 ("the Portable Crusher should never have been assigned a separate Mine ID. The Portable Crusher was always related to the overall mining operation at each location" as it was part of National's "secondary mining process" at those locations.).

For support, National relies upon another excerpt from the PPM, specifically where it states that:

> Preparation or milling plants that receive material from only one underground or surface mine, and are located on the same property as that mine, shall share the mine's identification number and shall not be assigned a separate number. Preparation or milling plants that share mine property with a surface or underground mine, but process material from other mines, are to be given

[8] Section 109(a) provides:

> At each coal or other mine there shall be maintained an office with a conspicuous sign designating it as the office of such mine. There shall be a bulletin board at such office or located at a conspicuous place near an entrance of such mine, in such manner that orders, citations, notices and decisions required by law or regulation to be posted, may be posted thereon, and be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any order, citation, notice or decision required by this Act to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

30 U.S.C. § 819(a).

> separate identification numbers. Preparation or milling plants that are not located on the same property as a surface or underground mine are considered to be centrally located facilities and are to have separate identification numbers.

Id. (citing Ex. 9, at 1). National contends that the Portable Crusher, because it only processes material after it has been moved to one of National's mine sites, and then only material from that site, falls within the first sentence. *Id*.

The Secretary responds that the Portable Crusher processes material not just from one National mine but at least two and has the potential to be used at many more National mines in Ohio. The Secretary cites the crusher's capacity to travel between mines as justification for requiring it to have its own Mine ID, so that MSHA can keep track of it and inspect it at a location where it can be used, as explained in the PPM excerpt set forth earlier. As background, the Secretary cites instances in which crushers have been involved in miner fatalities. S. Resp. at 5-6.

The PPM clearly does not address this situation: a portable plant that moves not just between different "pits," as described in the PPM, but between mines with their own MSHA-issued ID's. See Nat'l Mot. at 13 ("the Portable Crusher is not moved between several locations . . . without Mine ID[']s"). Nevertheless, because of MSHA's interest in knowing the location of the Portable Crusher to meet the agency's inspection obligations with respect to it, I am going to deny National's motion to dismiss, and address the Secretary's cross-motion. Whether or not the Portable Crusher is located at a pit without a Mine ID or at a mine with a Mine ID, it needs to be inspected by MSHA, and the Secretary has articulated a reasonable basis for using MSHA's portable plant tracking process to accomplish that goal.

National also argues that imposing the Mine ID and legal identity report requirements upon a portable plant that only moves between mines that have their own Mine ID's contravenes section 803(e) of the Mine Act, Nat'l Mot. at 14. Section 803(e) provides that:

> Any information obtained by the Secretary or by the Secretary of Health, Education, and Welfare under this Act shall be obtained in such a manner as not to impose an unreasonable burden upon operators, especially those operating small businesses, consistent with the underlying purposes of this Act. Unnecessary duplication of effort in obtaining information shall be reduced to the maximum extent feasible.

30 U.S.C. § 813(e).

As explained, the purpose of the Mine Act requirements is to enable MSHA to conduct on-location inspections of the Portable Crusher. By definition, this furthers, in the terms of section 803(e), one of "the underlying purposes of" the Mine Act. Consequently, I am not persuaded by National's section 803(e) argument.

For the foregoing reasons, National's motion is denied.

C. The Secretary's Motion for Summary Decision

The Secretary's motion is predicated on two bases. The first is that the Portable Crusher is indisputably a "coal or other mine," and thus subject to the Mine Act, including inspection by MSHA. *See* S. Mot. at 5-7. I found that to be the case above. The second basis is that the stipulated facts with respect to each of the three citations issued establish the liability of National, as the operator of the Portable Crusher, for the violations cited. *See id*. at 3-4, 7.

As for that second basis, after reviewing the parties' cross-motions, via e-mail I requested that in their respective responses they each address an issue raised, but not entirely addressed, by their motions. That issue is whether, and the extent to which National, as the simultaneous operator of both the Portable Crusher *and* the mine at which it is located at for use during its inspection, was consequently being subjected to duplicative obligations with respect to the mine safety standards, such as the three cited in this case.

I did so for multiple reasons. The first is that, according to the stipulations, prior to citing the Portable Crusher for the alleged violations of the three safety standards, MSHA had inspected the Findlay Plant. Stip. Nos. 13. Further stipulations indicated that, at that time, the Findlay Plant complied with all three of the standards the Portable Crusher was subsequently cited for violating, the plant having only been cited for two unrelated violations of 30 C.F.R. §§ 56.12004 and 56.12028. *Id*. at 14, 18, 20, 22. It is uncontroverted that, if the equipment in question did not travel between mine sites, but was instead dedicated to one site only, it would not be subject to separate inspection by MSHA. *See* S. Resp. at 13.

In addition, I was aware of no precedent for enforcing, against the same operator, the same mine safety or health standard twice at the same site: once for the overall mine site at a time that it includes a piece of equipment, and then again with respect to the equipment itself, as a "mine" separately recognized and regulated by MSHA. *Cf. DH Blattner*, 18 FMSHRC at 1581-83, 1586 n.9 (for Mine ID and legal identity compliance purposes, under the Mine Act multiple entities can be operators of a single mine). The lack of such precedent was confirmed by the Secretary's failure to cite any in her response.

Just as importantly, there was nothing in the stipulations indicating that MSHA had approached National regarding this potential result of MSHA insisting that the Portable Crusher have its own Mine ID. While the situation appears unique, it does not appear from the record that MSHA was recognizing as much. This was concerning, given the multitude of potential safety standards that MSHA could seek to separately enforce against both the Portable Crusher and the National plant at which it was located.[9]

The Secretary, citing the portable nature of the equipment in question, responded to the e-mail inquiry in the context of the three citations issued to the Portable Crusher. She stated that:

[9] I note that, according to the public Mine Data Retrieval System maintained by MSHA, the three citations at issue here are, to date, the only citations that have been issued to National as the operator of the Portable Crusher.

> [O]nce Respondent moved the Portable Crusher to the Findlay Plant, it was now required to implement a written Hazcom program and written training plan for the Portable Crusher. It is undisputed that prior to the Citation, there was no Hazcom or written training plan specific to the Portable Crusher. Stip. 18, 20. As such, there was no duplicative enforcement with regard to Citation Nos. 9717265 and 9717266.
>
> Under 30 CFR § 50.18002, operators are required to conduct inspections of the working place at least once each shift. Respondent did conduct such inspections of the Portable Crusher while it was located at the Findlay Plant but did not record those inspections on a document specific to the Portable Crusher. It is critical for MSHA's inspections that this separate document be maintained. Without a separate document, when the Portable Crusher moves from the Findlay Plant back to the Ottawa Plant (as it did in March 2024) or to another plant, MSHA would not have access to the inspection records of the Portable Crusher at the Findlay Plant and any other Plant where it operated in the last year. 30 CFR § 50.18002(d) ("operator shall maintain the examination records for at least one year, make the records available for inspection by authorized representatives"). Accordingly, there is no duplicative enforcement regarding workplace examinations.

S. Resp. at 13-14.

Because the Secretary's more fulsome response was with respect to the section 50.18002(d) violation, I will begin with that one first. "In an enforcement action before the Commission, the Secretary bears the burden of proving any alleged violation." *Wyoming Fuel Co.*, 14 FMSHRC 1282, 1294 (Aug. 1992) (citing *Jim Walter Res., Inc.*, 9 FMSRHC 903, 907 (May 1987)). To prevail, the Secretary must prove the cited violation by a "preponderance of the evidence," which 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).

1. Citation No. 9717266: Alleged Violation of Section 56.18002(d)

30 C.F.R. § 56.18002 provides:

> (a) A competent person designated by the operator shall examine each working place at least once each shift before miners begin work in that place, for conditions that may adversely affect safety or health.
>
> (1) The operator shall promptly notify miners in any affected areas of any conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions.
>
> (2) Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in

> section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.
>
> (b) A record of each examination shall be made before the end of the shift for which the examination was conducted. The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners.
>
> (c) When a condition that may adversely affect safety or health is corrected, the examination record shall include, or be supplemented to include, the date of the corrective action.
>
> (d) The operator shall maintain the examination records for at least one year, make the records available for inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.

Citation No. 9717266 alleged a violation of section 56.18002(d), in that:

> A written record of workplace examinations for the Metso Lokotrack crusher Asset # 10439 was not available for review by MSHA. It was stated that examinations had been conducted every shift of each working place and appropriate action had been taken to correct hazardous conditions. However, the operator had failed to document and/or maintain records documenting the work place exams.

See Stip. No. 21; Ex. 7, at 1. The citation states that, subsequently, National "developed and implement[ed] a work area examination plan for the" Portable Crusher. Ex. 7, at 5.

Other pages from Exhibit 7, however, do not support that last statement, as more limited measures were taken to abate the violation of section 56.18002. The violation was recognized to be a record-keeping violation, so abatement of the violation was accomplished, and the citation terminated, when "[t]he plant superintend[ent] created a daily work area examination form" for the Portable Crusher. *Id*. at 2, 4.

Regardless, the stipulations and citation exhibit, as supplemented by the Secretary's response to National's motion, carry the Secretary's burden of demonstrating a violation of section 56.18002(d)'s requirement that a record of the examination of the Portable Crusher be maintained. *See* Stip. No. 23 ("at the time of the 2023 MSHA inspection, National had not kept a written record of workplace examinations specifically for the Portable Crusher. National began keeping such a separate record for the Portable Crusher after the June 2023 MSHA inspection."). As the Secretary explained in her response (S. Resp. at 13-14), the examination of the Portable Crusher needed to be separately recorded from the workplace examination of the remainder of the Findlay Plant, in order that the record required by section 56.18002 could travel with the Portable Crusher when it was moved from the Findlay Plant to another of National's mines (as did subsequently occur). *Compare* Ex. 8, at 1-2 (Daily Workplace Examinations records of

Findlay Plant) *with* Ex. 8, at 3 (subsequently created Daily Workplace Examinations record of Portable Crusher).

The foregoing establishes that the Secretary has carried her burden with respect to proving a violation of section 56.18002(d), so Citation No. 9717266 is affirmed.

2. Citation No. 9717264: Alleged Violation of Section 47.31(a)

30 C.F.R. § 47.31 provides:

> Each operator must—
>
> (a) Develop and implement a written HazCom program,
>
> (b) Maintain it for as long as a hazardous chemical is known to be at the mine, and
>
> (c) Share relevant HazCom information with other on-site operators whose miners can be affected.

30 C.F.R. § 47.32 then goes on to detail the substantive requirements of a written HazCom program. Significantly, section 47.32 permits, but does require, that "the list or other record identifying all hazardous chemicals known to be at the mine" be "compiled . . . by individual work areas." Rather the compilation can be "for the whole mine." *See* 30 C.F.R. § 47.32(b)(2).

Here, Citation No. 9717264 alleges a violation of section 47.31(a), in that:

> The operator has not developed and implemented a written HazCom program. The company has fewer than five employees and should have had the program in place as of 08/31/2022. Miners were exposed to chemical hazards without the proper training and could be seriously injured from accidental contact of a hazardous chemical. Examination of the mine site revealed that the only chemicals used are motor oils, diesel fuel and def. There was no evidence that these chemicals were stored at the mine site in large quantities.

Ex. 2, at 1. The citation states that, subsequently, "[t]he operator developed and implement[ed] a haz-com plan for the" Portable Crusher. *Id*. at 5.

Again, however, this statement was contradicted by different Exhibit pages. The Photo Mounting Worksheet appended to the citation states that the citation was terminated when National simply added an entry for the Portable Crusher to National's existing HazCom program. *Id*. at 4.

Moreover, notably, the Secretary has not alleged, much less shown, why National's existing HazCom program, in effect at all its mine sites, was not sufficient for the Portable

Crusher. Indeed, the description of the termination of the citation demonstrates that the existing program was considered by MSHA to be so.

Exhibit 3 is National's Hazard Communications Program, dated November 16, 2017, that was apparently in effect at the time the citation issued. It states that "[t]he practices and procedures described herein constitute the program by which [National] will comply with . . . the MSHA Hazard Communication Standard (30 CFR 47)" and that it applies to "[a]ll [National] Facilities." Ex. 3, at 1. There is no indication whatsoever in the record that the Portable Crusher is excluded from National HazCom Program as an undisputed "National Facilit[y]."

The foregoing establishes that at the time the citation was issued alleging a failure on National's part to "develop and implement a written HazCom Program" for the Portable Crusher that, in fact, such a program already existed. This was acknowledged by the inspector when he terminated the citation when that program was amended to expressly include the Portable Crusher as part of the existing program.

The record thus plainly contradicts that MSHA expected National to have a separate HazCom Program for the Portable Crusher. Moreover, despite being invited to do so, the Secretary has passed on the opportunity to explain why National's existing HazCom Program should be viewed as insufficient for the Portable Crusher. Indeed, no chemicals or other substances, hazardous or otherwise, were identified in connection with the operation of the Portable Crusher.

Given this overall record, the stipulation that "National had not developed and implemented a separate Hazcom for the Portable Crusher" is of little relevance. *See* Stip. No. 18. I thus conclude that the Secretary is unable to carry her burden to establish a violation of the cited standard and vacate Citation No. 9712764.

3. Citation No. 9717265: Alleged Violation of Section 46.3(a)

30 C.F.R. § 46.3(a) states that:

> (a) You must develop and implement a written plan, approved by us under either paragraph (b) or (c) of this section, that contains effective programs for training new miners and newly hired experienced miners, training miners for new tasks, annual refresher training, and site-specific hazard awareness training.

Citation No. 9717265 was issued, alleging a violation of section 46.3(a) on the ground that, with respect to the Portable Crusher:

> The Operator did not develop and implement a written training plan that contains effective programs for training new miners, newly hired experienced

> miners, training for new tasks, annual refresher training, and site-specific hazard awareness training as required under 46.3 and 46.4 of 30 CFR.

Ex. 4, at 1.

Once again, the copy of the citation and supporting documentation is inherently inconsistent. The citation states that, subsequently, National "developed and implement[ed] a training plan for the" Portable Crusher. *Id*. at 5. The Photo Mounting Worksheet for the citation, however, states that the citation was terminated simply when the Portable Crusher "was added to the training plan book." *Id*. at 4.

Apart from the plainly inaccurate citation, there is no credible evidence that the Secretary considered National to have failed to comply with section 46.3(a) because the Portable Crusher did not have a separate written training plan. Rather, the evidence shows that MSHA considered the existing National training plan to be adequate for the Portable Crusher, to such an extent that the only corrective action necessary was to expressly add the Portable Crusher to that plan. *See also* Ex. 5, at 4-5 (listing the many National "sites" covered by the National training plan).[10]

As with the alleged HazCom program violation, the Secretary fails to explain why a separate written training plan would be required for the Portable Crusher. Indeed, such an explanation would seem to contradict MSHA's actions in this case. Under these circumstances, the Secretary's reliance on the stipulation that "National had not developed a separate written training plan for the Portable Crusher" does little to carry her burden in this case. *See* Stip. No. 20.

In light of the foregoing, Citation No. 9717265 will also be vacated, as the evidence submitted prevents the Secretary from establishing the charged violation.

V. PENALTY

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

> (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

[10] The use of the term "site" in the training plan is likely not accidental, given the section 46.3(a) requirement that "site-specific" hazardous awareness training be provided. That the Portable Crusher was not viewed as a separate mine "site," despite having to have a separate Mine ID, is a further indication that the substance of the National training plan already covered the Portable Crusher and its operations while at any National plant.

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. 9717266, the Secretary proposed a penalty of $143.00. This is the first and only violation cited and affirmed with respect to the "mine" in question, the Portable Crusher. There is no evidence that the proposed penalty will affect the ability of National, a multi-facility operator, to continue operating the Portable Crusher.

I determine National's negligence to be low, based on the previously discussed unique circumstances that issuance of the citation raises. Regarding the gravity of the violation, I also determine that it would affect no more than one person, for whom there was no likelihood it would result in injury or illness. Moreover, National demonstrated good faith by promptly creating the work area examination form for the Portable Crusher. Ex. 7, at 4 & Ex. 8, at 3. Considering the six criteria set forth under section 110(i) of the Mine Act in conjunction with the relevant facts, I hereby assess a penalty of $143.00.

VI. CONCLUSION AND ORDER

In light of the foregoing, it is hereby **ORDERED** that: (1) Citation No. 9717266 is **AFFIRMED,** and that Respondent pay a penalty of **$143.00** within 30 days of the date of this decision[11]; and (2) Citations Nos. 9717264 and 9717265 are **VACATED.** Accordingly, this case is **DISMISSED.**

John T. Sullivan
Administrative Law Judge

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[11] 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.