

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 26, 2024

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner,

v.

MORTON SALT, INC.,
Respondent.

CIVIL PENALTY PROCEEDINGS

Docket No. CENT 2023-0009
A.C. No. 16-00970-562752

Docket No. CENT 2023-0030
A.C. No. 16-00970-564759

Docket No. CENT 2023-0062
A.C. No. 16-00970-566522

Docket No. CENT 2023-0066
A.C. No. 16-00970-568130

Mine: Weeks Island Mine and Mill

DECISION AND ORDER

Appearances: Tyler Nash, U.S. Department of Labor, Office of the Solicitor, 525 S. Griffin Street, Suite 501, Dallas, TX 75202

Donna Vetrano Pryor, Husch Blackwell LLP, 1801 Wewatta Street, Suite 1000, Denver, CO 80202

Before: Judge Simonton

I. INTRODUCTION

These cases are before me on a petition for assessment of civil penalty filed by the Secretary of Labor or Petitioner, acting through the Mine Safety and Health Administration, against Morton Salt, Inc., (“Morton Salt” or “Respondent”), pursuant to the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 801.¹ These cases involve five Section 104(a) citations with a total proposed penalty of \$38,307.00.

¹ In this decision, the joint stipulations, transcript, Petitioner’s exhibits, Respondent’s exhibits, Petitioner’s brief, and Respondent’s brief are abbreviated as “Jt. Stip.,” “Tr. I and II,” “Ex. P-#,” “Ex. R-#,” “Pet. Br.,” and “Resp. Br.,” respectively.

The parties presented testimony and documentary evidence regarding the citations at issue at a hearing held on November 29-30, 2023, in Lafayette, Louisiana. MSHA inspectors Brandon Olivier and William Clark, Morton Salt production supervisor Brian Provost, and Morton Salt miners Robert Segura and Heath Toups testified for the Secretary. For the Respondent, site safety trainer Landon Olivier, production supervisor Brian Provost, general maintenance supervisor Lee Franks and Morton Salt miners Marcus Olivier and Quinn Norwood testified. After fully considering the testimony and evidence presented at hearing and the parties' post-hearing briefs, I **AFFIRM** Citation Nos. 9649738, 9649739, 9676603, 9676605, and 9673757, as modified herein.

II. STIPULATIONS OF FACT

At hearing, the parties agreed to the following stipulations:

1. Relating to Docket No. CENT 2023-0009, the parties settled the below citations as follows:
 - a. Citation No. 9649647 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - b. Citation No. 9649674 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - c. Citation No. 9649715 was accepted by Morton Salt as written.
 - d. Citation No. 9649721 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - e. Citation No. 9649723 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - f. Citation No. 9649725 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - g. Citation No. 9649726 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - h. Citation No. 9649730 was accepted by Morton Salt as written.
 - i. Citation No. 9649731 was vacated by the Secretary.

2. Relating to Docket No. CENT 2023-0030, the parties have settled the below citations as follows:
 - a. Citation No. 9676607 was accepted by Morton Salt as written.
 - b. Citation No. 9673759 was accepted by Morton Salt as written.
 - c. Citation No. 9649797 was accepted by Morton Salt as written.
 - d. Citation No. 9676611 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - e. Citation No. 9676621 was accepted by Morton Salt as written.
 - f. Citation No. 9676622 was vacated by the Secretary.

3. Relating to Docket No. CENT 2023-0062, the parties have settled the below citations as follows:
 - a. Citation No. 9676616 was modified by the Secretary with a reduction to non-S&S, moderate negligence, and a commensurate reduction in penalty.

- b. Citation No. 9676617 was modified by the Secretary with a reduction to moderate negligence and a commensurate reduction in penalty.
 - c. Citation No. 9676636 was accepted by Morton Salt as written.
 - d. Citation No. 9676637 was accepted by Morton Salt as written.
 - e. Citation No. 9676638 was accepted by Morton Salt as written.
 - f. Citation No. 9676639 was accepted by Morton Salt as written.
 - g. Citation No. 9676631 was accepted by Morton Salt as written.
 - h. Citation No. 9676632 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
4. Relating to Docket No. CENT 2023-0066, the parties have settled the below citations as follows:
 - a. Citation No. 9674865 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 - b. Citation No. 9648950 was modified by the Secretary with a reduction to non-S&S and a commensurate reduction in penalty.
 5. These dockets involve an underground salt mine known as the Weeks Island Mine and Mill (the “Mine”), which is owned and operated by Morton Salt.
 6. The Mine, located near New Iberia, Iberia Parish, Louisiana, MSHA Mine ID No. 16-00970, is a “mine” as defined in § 3(h) of the Federal Mine Safety and Health Act of 1977 (“the Mine Act”), 30 U.S.C. § 802(h).
 7. The Administrative Law Judge has jurisdiction over this proceeding, pursuant to § 105 of the Mine Act, 30 U.S.C. § 815.
 8. Morton Salt has been the “operator” as defined in § 3(d) of the Mine Act, 30 U.S.C. § 802(d), of the Mine at which the citations at issue in this proceeding were issued at all relevant times.
 9. Morton Salt’s operations have affected interstate commerce at all relevant times.
 10. The assessed civil penalty would not affect Morton Salt’s ability to remain in business. However, given the mine’s POV status, these citations could result in the mine’s temporary or permanent closure.

Tr. I-7-11.

III. FINDINGS OF FACT AND CONCLUSIONS

Morton Salt operates Weeks Island Mine and Mill, a domal salt mine located near New Iberia, Iberia Parish, Louisiana. It. Stip. 6. The citations at issue at hearing were issued by MSHA Inspectors Brandon Olivier and William Clark during inspections conducted on June 7, 2022, August 29, 2022, and August 30, 2022.

A. Citation No. 9649738

i. Factual Background

At Weeks Island, Morton Salt uses a mining cycle in the bench areas comprised of blasting, scaling, mucking, drilling, and loading. Tr. I-67-68, I-74-75. After blasting, which uses explosives, pieces of salt that can crack away from the wall and fall may form on the ribs and ledges of the bench. Tr. I-202. These salt pieces are known as scales and can potentially fall onto miners or equipment working below if they are not removed. Tr. I-201-202. Prior to commencing the next phase in the mining cycle after blasting, the area is fire bossed to inspect for dangerous gases and to remove hazards. Tr. I-75, I-78. After the fire boss, salt is removed using a Load Haul Dump (“LHD”) vehicle in a process known as mucking. Tr. I-76. As a room is mucked, miners will gradually move towards the face of the bench. Tr. II-112-113.

The formation of scales is not limited to after blasting, and miners should continually inspect the room for hazards and dangerous conditions as scales can continue to form over time. Tr. I-75, I-258. Falling scales are dangerous because they can lead to serious injuries or death depending on their size. Regarding Morton Salt’s policies for finding and identifying hazards, miners are trained to inspect the room they are working in and should always be looking for scales. Tr. I-312. When miners are assigned to work in an area, they are required by the operator to fill out a workplace examination card prior to beginning work which documents any hazards that the miner encounters. Tr. I-226. If a miner cannot address a hazard on their own, they are taught to barricade the area and the hazard is added to a working list to be addressed at a later date according to its priority. Tr. I-256, Tr. II-9-10.

Citation No. 9649738 was issued by Inspector Brandon Olivier on June 7, 2022, while he was conducting an E-01 inspection at Weeks Island. Tr. I-61, I-65; Ex. P-1-1. While examining the 19-O area of the mine, he found loose ground along the ledge and ribs of the bench area that would expose miners to fatal injuries if it fell. Tr. I-79, I-101-111; Ex. P-5. Specifically, the loose ground was described as large scales with openings at the bottom, indicating that they could come down at any time. Tr. I-87, I-106-107, Ex. P-5. The scales were approximately 50-60 feet above the lower level where mucking was ongoing. Tr. I-77, I-109. This condition was only discernable with the bright lights from an LHD vehicle and was not sufficiently visible with only a miner’s cap light and the inspector’s spotlight that he brought with him. Tr. I-88. There were no barricades or other warning signs that would alert employees to the dangerous conditions. Tr. I-85. The inspector stated that as mucking continued, miners would be exposed to the material on the ledge. Tr. I-83-84. They would have also been exposed from the ribs on the left and right regardless of the mucking process. Tr. I-84.

Small vehicle tracks from an ATV, which do not have suitable protection from falling hazards, indicated that miners were passing under this loose material and were exposed to the hazards. Tr. I-80-81; Ex. P-1-3. When the inspector issued the citation, it was not determined when the tracks were made or when the scales were formed. Tr. I-170, I-172. He did not see anyone physically under the scales. Tr. I-177-178. The inspector gave conflicting testimony

regarding whether there was a miner actively working in the area at the time of the citation or whether a miner was waiting to start work. Tr. I-73-174. However, he did testify that his notes were an accurate reflection of how the conditions actually were when he issued the citation. Tr. I-173. Olivier's notes state that "the room mucked with LHD. Since Monday the ledge had separated with loose resting on angle. Loose observed on rib" and "small vehicle tracks near the wall – LHD mucked out." Ex. P-1-3. Miners were still able to access the room and there was remaining muck inside. Tr. I-83-84, I-176-177. The inspector also did not recall asking for the LHD operator's workplace examination card, but he still would have issued the citation regardless of the information on the card because the room was open for travel. Tr. I-174-175.

After identifying the loose ground conditions, the inspector called Brian Provost, the production supervisor, to the area. Tr. I-89. Together, they went to the top of the bench to observe the conditions from that angle. Tr. I-89. When at the top, Provost told the inspector that he had only looked at the conditions from the bottom and did not inspect the top prior to assigning miners to muck out the room. Tr. I-90. Provost further explained to Inspector Olivier that he had fire bossed the room on June 4, and these conditions were not present then, which was confirmed in Provost's own testimony. Tr. I-89-90, I-243, I-245, I-275. On June 7, he conducted a pass through at the bottom of the 19-O that lasted approximately a minute. Tr. I-240. He also confirmed in his testimony that mucking had occurred in the 19-O on multiple shifts post blast to the time of MSHA's inspection on June 7. Tr. I-240. Provost's testimony on this point is also confirmed by Respondent's production reports for June 6. Tr. I-222-224; Ex. P-10.

Brian Provost testified that he only checked the conditions from the bottom of the bench without using a spotlight on June 7. Tr. I-240-241. He had assigned an employee to work in the room, but he said that at the time of the citation the employee had yet to begin, and no one was actively working in 19-O. Tr. I-256. Because he had inspected the area from the top when he fire bossed on June 4, he believed that he did not need to check the top again. Tr. I-242-243. From the workplace cards, no employee that had been assigned to muck from June 4 to June 6 documented a hazard. Tr. I-228-236; Ex. P-13. Provost had previously seen miners check the top of the ledge, but that checking the top was optional and not required. Tr. I-253. This was confirmed by site safety manager Landon Olivier in his testimony. Tr. II-48.

Heath Toups mucked in 19-O on June 6 during the night shift and his completed workplace exam card did not reflect that he identified any hazards in the area on that date. Tr. I-315-316; Ex. P-13. He has never really gone to the top of the bench to inspect. Tr. I-324. Emphasizing the importance of the pre-shift examinations, Toups stated that based on his experience, scales can spontaneously form and that the conditions of an area can change daily. Tr. I-312. On June 8, Toups removed the scales in 19-O to abate the citation using a mechanical scaler that can generate a lot of force. Tr. I-329-331.

Morton Salt offered additional testimony regarding the safety of their LHD vehicles. Maintenance general supervisor Lee Franks testified for Morton Salt that he believed an LHD operator was unlikely to be injured by a falling scale because LHDs are designed for use in mines and are stronger than the general industry equipment. Tr. II-136; Ex. R-G. He also believed that it would be unlikely that an operator would be outside of the cab, and that all work could be performed from within the cab. Tr. II-136-137, II-147. However, the testimony of

another miner, Quinn Norwood, indicates that sometimes a miner may exit an LHD in order to get better visibility of the area and to check for scales on the ribs. T. II-113-114. Regarding these particular scales, Heath Toups testified that he would not feel safe operating an LHD with the scales at issue above him because if one fell, it could severely damage equipment and cause fatal injuries. Tr. I-320.

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).

During his inspection on June 7, 2022, Olivier issued 104(a) Citation No. 9649738, which alleged:

Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitting in the affected area. There was loose ground found on the ledge of 19-0 in the bench area. The loose was observed 50-60ft high from the lower level. This room was shot and fire bossed on 6/4/2022 and mucked on 6/6/2022. This condition exposes miners to serious injuries if the loose were to fall on the miners or on the equipment while they are in the area.

Standard 57.3200 was cited 66 times in two years at mine 1600970 (66 to the operator, 0 to a contractor).

Ex. P-1-1; Tr. I-65.

Olivier designated the citation as a significant and substantial violation of 30 C.F.R. § 57.3200 that was reasonably likely to cause an injury that could reasonably be expected to be “fatal,” would affect one miner, and was caused by Respondent’s high negligence. Ex. P-1-1.

30 C.F.R. § 57.3200 states that “[g]round conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry.”

The Secretary asserts that Morton Salt violated this standard by sending miners to work in 19-O prior to removing the scales along the ribs and ledge of the bench. Pet. Br. at 9. The Respondent argues that the Secretary has not proven that the scales posed a hazard to miners working in the area, relying on Brian Provost’s testimony and the workplace identification cards

to show that no hazards were identified in 19-O prior to the citation. Resp. Br. at 20. Morton Salt also argues that it is unlikely that a scale could hit a miner because the muck pile prevented miners from getting close enough to the scales. Resp. Br. at 21.

The inspector first noticed the scales from the bottom of the bench. When he examined the conditions from the top of the bench, he determined that these scales could cause fatal injuries if one were to fall. There was no barrier or other sign that would provide warning of the dangers in the room. While the inspector did not measure the loose ground, he did provide estimates as to their size and indicated they were heavy, thus posing potentially fatal safety hazards from 50-60 feet above the 19-O floor. I credit the inspector's notes made at the time of the inspection as well as Respondent's production reports for June 6 which reflect that mucking was ongoing in 19-O. While it may be true that supervisor Brian Provost did not see any hazardous conditions when he fire bossed the room on June 4, it is clear that hazardous ground conditions existed on June 7 when the citation was issued and that miners had been mucking in the 19-O post blast leading up to the time the inspector issued the citation.

The inspector unequivocally testified that as mucking continued to advance toward the face miners would be exposed to the ledge scales. In fact, a miner had been assigned and was staged to begin mucking on the morning of June 7 when the inspector discovered the scales. Production supervisor Provost had already conducted a one-minute pass through from below without detecting the hazardous conditions on the ledge and ribs. Had the inspector not been present there is no question the hazardous conditions would have continued as mining operations continued. In addition, small all terrain vehicle (ATV) tracks next to the rib demonstrate that miners had already been exposed to scales along the left and right ribs directly above. The inspector's conclusions are supported by miner Heath Troups's testimony that scales can form unpredictably, that conditions in a room can change daily, and that it was dangerous to muck underneath these scales.

Regarding the lack of hazards noted on the workplace examination cards, it is just as likely that they were filled out inaccurately as they were filled out accurately, and they are not dispositive to show that no hazard had existed prior to June 7. This is especially true because the miner who mucked the 19-O, Heath Troups, confirmed he does not go to the top of the bench to inspect for scales. He only inspects from below increasing the likelihood that the existence of ledge or rib scales as well as their size and condition may not be observed from below given that the ledge is 50 to 60 feet above.

The preponderance of evidence demonstrates there was mucking ongoing while there were dangerous ground conditions present thus, the area should have been checked from above before assigning a miner to the area. Accordingly, I affirm that there was a violation of 30 C.F.R. § 57.3200.

iii. Gravity and S&S

The inspector assessed the hazard as reasonably likely to cause an injury or illness, because of the small ATV vehicle tracks located close to the loose ground above and because if the area had continued to be mucked, miners would be exposed to the material off the ledge. Tr. I-90-91. He designated that the injury would reasonably be expected to be fatal, because material

of a significant size, roughly five to six feet long and two foot thick, falling from a distance of fifty or sixty feet could cause significant injuries even if the miner were inside the covered cab of an LHD. Tr. I-91. I affirm these designations.

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 Secretary has proven that a violation of a safety standard has occurred. My analysis turns to the second step, whether the violation was reasonably likely to cause the occurrence of the discrete safety hazard of scales falling onto a miner. While the inspector did not witness a miner or equipment underneath the scales, the likelihood of the occurrence of the hazard is determined assuming normal continued mining operations. *Consolidation Coal Co.*, 8 FMSHRC 890, 899 (June 1986). Although there is a dispute whether a miner was actively working in 19-O at the time of the citation, at the very least a miner was assigned to muck in the room after a supervisor checked the room and failed to notice the scales or examine the area from above. In addition, there was evidence mucking had already occurred post blast up to the date of the inspection. Further, the ATV tracks seen by the inspector and documented by his contemporaneous notes demonstrate that miners were traveling near the wall, close to the scales. Because there is evidence that miners were close to the scales prior to the citation and because another miner was assigned to work in the room while the scales were present, it is reasonably likely that a scale would fall onto a miner. Scales falling from a height of 50 to 60 feet are reasonably likely to cause fatal injuries, which are serious in nature, satisfying the third and fourth steps of the S&S analysis. I affirm the inspector’s gravity and S&S 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.

Olivier assessed the negligence as high because as part of the mine’s workplace examination, it is required to inspect the room and it was clear from his discussion with Brian Provost that the top of the bench had not been inspected. Tr. I-91. It was noted that the

conditions were obvious and could have been spotted from either the top or the bottom. Tr. I-93. Although the condition was noticeable from the bottom of the bench, the inspector still marked the negligence as high because the mine supervisor failed to inspect it from the top of the bench. Tr. I-168-169.

Given the risks of scales falling from a height of 50-60 feet, management or its contractor designees should inspect from both above and below before miners are permitted to muck. Testimony from Weeks Island miners clearly demonstrates that they do not always inspect from above, meaning that it is management's responsibility to do so to ensure safe working conditions. Additionally, Brian Provost is a supervisor at Weeks Island and is responsible for ensuring safe working conditions for the miners. He had only spent around a minute inspecting 19-O before assigning a miner to muck in the room. I affirm the inspector's designation that this violation is highly negligent.

B. Citation No. 9649739

i. Factual Background

In conjunction with Citation No. 9649738, Citation No. 9649739 was issued during the same inspection based on the loose ground in 19-O. Tr. I-92, I-113. The facts of the violation are largely the same as Citation No. 9649738. The inspector determined that Morton Salt did not adequately examine the bench area before assigning miners to work in the area. Tr. I-115. The area had been accessed three times before anyone noticed the hazardous conditions, based on the workplace inspections. Tr. I-117-118; Ex. P-13. The production supervisor on duty, Brian Provost, had informed the inspector that he had inspected the area from the bottom of the bench and was about to send in a miner to muck before the inspector observed the ground conditions. Tr. I-115-116, I-256. Provost confirmed that he did not inspect the area from above, only from the bottom, and that the last time he had checked the top was during the fire boss on June 4. Tr. I-240-243. Had someone viewed the conditions at the top, they would have had a clear view of the hazards and the scales that remained after blasting. Tr. I-116. By only making a pass through the area below, he did not sufficiently examine for hazardous conditions prior to assigning miners to work in the area. Tr. I-115-116, I-240.

At the time of the inspection, Morton Salt had not designated one of their own employees to comply with this standard and instead relied on contractors. Tr. I-97; Ex. P-2. One of the contractors told the inspector that he had never been on the bench where the scales were located. Tr. I-97. These contractors were tasked specifically with scaling and bolting, not with inspecting for scales. Tr. I-202-204. Morton Salt presented testimony that they provide training to their employees on examining ground conditions and identifying hazards. Tr. II-36-37; Ex. R-X. During the relevant time period from June 4 to June 7, none of the miners who worked in 19-O recorded any hazards on their workplace identification cards. Tr. I-227-236; Ex. P-13.

ii. Fact of Violation

Olivier issued 104(a) Citation No. 9649739 on June 7, 2022, which alleged:

Persons experienced in examining and testing for loose ground shall be designated by the mine operator. Appropriate supervisors or other designated persons shall examine, and where applicable, test ground conditions in areas where work is to be performed, prior to work commencing, after blasting, and as ground conditions warrant during the work shift. There was loose ground found in 19-[O] that was not identified after blasting. The area was blasted on 6/4/2022 and mucked on 6/6/2022 and the ground condition was not identified prior to work commencing. This condition exposes miners to injuries if the loose were to fall while miners are in the area.

Ex. P-16-1; Tr. I-113.

Olivier designated the citation as a significant and substantial violation of 30 C.F.R. § 57.3401 that was reasonably likely to cause an injury that could reasonably be expected to be “fatal,” would affect one miner, and was caused by Respondent’s high negligence. Ex. P-16-1.

30 C.F.R. § 57.3401 states that “[p]ersons experienced in examining and testing for ground shall be designated by the mine operator. Appropriate supervisors or other designated persons shall examine and, where applicable, test ground conditions in areas where work is to be performed, prior to work commencing, after blasting, and as ground conditions warrant during the work shift. Underground haulageways and travelways and surface area highwalls and banks adjoining travelways shall be examined weekly or more often if changing ground conditions warrant.”

Morton Salt contends that there was no violation of this standard because all miners are trained to examine ground conditions and Brian Provost had examined the top of the ledge during his fire boss on June 4 and did not find a hazard. Resp. Br. at 34-36. Brian Provost had inspected the room again on June 7 prior to assigning a miner to work in 19-O and did not find any hazards. Resp. Br. at 36. It is undisputed that on June 7, Provost did not inspect 19-O from the top of the bench and his inspection from the bottom of the bench was a one-minute pass through. I credit the inspector’s testimony that failing to check the top of the bench allowed this condition to go unnoticed from June 4 until June 7. It is also clear that Provost’s one-minute pass-through inspection was insufficient because these conditions were visible from the bottom of the bench and were not observed by the operator on June 7 until the inspector issued the citation. Accordingly, there has been a violation of this standard.

iii. Gravity and S&S

The inspector determined that the citation was reasonably likely to result in an injury because there were people actively working in the area, exposing them to the hazard. Tr. I-121. He designated that the violation was reasonably likely to cause fatal injuries because the hazards were 50-60 feet high and are comprised of significant material. Tr. I-121-122. I affirm these designations.

As a violation of 30 C.F.R. § 57.3401 has occurred, I assess whether the violation was reasonably likely to cause the occurrence of a discrete safety hazard. The hazard, the same as Citation No. 9649738, is loose ground conditions such as scales falling onto miners working in

the area. I find that the hazard is reasonably likely to occur as a result of insufficient examinations by the operator. Falling scales are reasonably likely to cause an injury of a reasonably serious nature. I affirm the S&S designation.

iv. Negligence

Olivier designated the negligence as high because the supervisor should have known to examine the room thoroughly before assigning miners to work in the area and did not make any effort to barricade the area or set up warning signs. Tr. I-122-123. Respondent argues that there are mitigating circumstances that should lower the negligence to moderate, because they have trained miners to examine for ground condition issues and because the inspector concluded that no one examined the area despite failing to review the workplace examination cards for 19-O. Further, although there was a miner that was about to muck in 19-O, he had yet to begin work when the citation was issued.

Brian Provost was the only employee to view the top after the blasting had occurred and prior to the citation when he fire bossed on June 4. The inspector's notes regarding his rationale for designating this violation as high negligence show that Morton Salt had acknowledged that everyone should be examining for these conditions, yet the 19-O had been accessed three times during different shifts without anyone noting the condition which belies the training that Provost and the exposed miners received. I credit the inspector's testimony that failing to observe from the top allowed the conditions he found on the morning of June 7 to go unnoticed over the course of the mucking shifts between June 4 and the morning of his inspection. Such a glaring discrepancy fails to merit crediting Respondent's training as a mitigating factor.

C. Citation No. 9676603

i. Factual Background

When inspecting the wash bay area on August 29, 2022, Inspector Olivier issued a citation for the washouts 3-5 feet deep and 5-6 feet long he observed in the area. Ex. P-25. Washouts are potholes caused by fresh water dissolving salt on the floor of the mine. Tr. I-125. These washouts provided unsafe access next to the operator's pressure washer trailer in the wash bay. Tr. I-124, I-125. In order to use the degreaser spray bottle located on the trailer, miners would need to step over or go around large potholes. Tr. I-125-126, I-128, I-137; Ex. P-30. The area is dark, with the only lighting coming from around a corner and a miner's cap lamp. Tr. I-142-143; Ex. P-30. Miners accessed this area weekly to wash their equipment. Tr. I-127-128. Caution tape and a tag dated July 28, 2022, for trip hazards, sink holes, and roof scales was found near the pressure washer. Tr. I-126-127; Ex. P-29. The workplace identification card for the wash bay also flagged these hazards. Tr. I-128-129.

Morton Salt presented testimony that miners would only need to stand near a washout to use the degreaser bottle and that miners did not need to use the degreaser bottle every time they were in the wash bay. Tr. I-267. Both production superintendent Brian Provost and miner Marcus Olivier testified that miners did not need to stand on the trailer or near the wheels in order to use the pressure washer. Tr. I-267, II-73. Regarding the frequency of washouts, Marcus Olivier stated that they were not uncommon, but had been seen and corrected before. Tr. II-77.

Mine management was not aware of these particular washouts at the time of the citation. Tr. II-71, II-78-79. The caution tape and tag found nearby were related to a different condition that had already been corrected and was not related to the washouts the inspector observed. Tr. II-73-74.

ii. Fact of Violation

Olivier issued 104(a) Citation No. 9676603 on August 29, 2022, which alleged:

Safe means of access shall be provided and maintained to all working places. There was unsafe access found around the pressure washer next to the wash bay on 1500'. There were washouts in the [area] around the wash trailer. The washouts appeared to be at least 3-5ft deep in areas. The area had a caution tape and tag identifying the hazards lying on the floor dated 7/28/2022. This area is access[ed] weekly by miners to wash equipment. This condition exposes miners to injury if they were to fall in one of holes in the ground.

Standard 57.11001 was cited 3 times in two years at mine 1600970 (3 times to the operator, 0 to a contractor).

Ex. P-25-1; Tr. I-123.

Olivier designated the citation as a significant and substantial violation of 30 C.F.R. § 57.11001 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 high negligence. Ex. P-25-1.

30 C.F.R. § 57.11001 states that “[s]afe means of access shall be provided and maintained to all working places.” It is undisputed that a violation of this standard occurred because there were washouts near the pressure washer.

iii. Gravity and S&S

Olivier designated the citation as reasonably likely to cause an injury that could be reasonably expected to result in lost workdays or restricted duty. Ex. P-25-1. At hearing, he testified that he selected “reasonably likely” because miners access the pressure washer at least one time per week and thus are exposed to injuries from falling in holes leading to sprains or strains. Tr. I-142-143. These types of injuries would be reasonably likely to cause a miner to lose workdays or be placed on restricted duty. Tr. I-143. I affirm the gravity for this violation.

It has already been established that there has been a violation of a mandatory safety standard. The discrete safety hazard that this standard is designed to prevent is trips and falls from stepping in or around a washout or other obstacle. I find that this hazard is reasonably likely to occur, and step 2 of the *Mathies* test is satisfied. The area is not well-lit, miners regularly access this area to use the pressure washer, and miners need to maneuver around one of the washouts in order to use the degreaser bottle as needed. These facts support that the occurrence of the hazard is reasonably likely. I find that tripping into a deep washout like those present near the pressure washer trailer is likely to cause an injury. A specific type of injury is not required to

find that an injury is reasonably serious, and a sprain or similar injury may be considered reasonably serious. *S&S Dredging Co.*, 35 FMSHRC 1979, 1981-82 (July 2013). As the identified injury here is strains or sprains, I find that this type of injury is reasonably serious. As all four elements of the *Mathies* test have been satisfied, I find that the violation was properly determined to be significant and substantial.

iv. Negligence

The violation was designated as high negligence because it was a recurrent issue, and the operator was aware of the condition. Morton Salt contends that the negligence should be mitigated because a miner had previously identified and tagged out a prior washout in the wash bay that had already been addressed and training on housekeeping and conducting workplace inspections to identify hazards is provided. Resp. Br. at 41. There was also no evidence that management was aware of the cited condition prior to the inspection. Resp. Br. at 41. I credit Marcus Olivier's testimony that washouts were not a terribly common occurrence at the mine and that management did not have prior knowledge of this particular washout. For all of these reasons, I lower the negligence of this citation from high to moderate.

D. Citation No. 9676605

i. Factual Background

In the 23-H area, which is a primary escape route and highly traveled, scales existed all along the ceiling approximately 20 feet above the ground over the roadway. Tr. I-145-146, I-286. Miners Robert Segura and Jeb Dionne first identified this condition on July 11, 2022, a month and a half before the citation was issued. Tr. I-145-146, I-286. They barricaded off the area using four blue cones, red caution tape, and a tag. Tr. I-288. This condition was then noted on their workplace exams, which were not shown to the inspector during his inspection. Tr. I-153.

When Inspector Olivier issued the citation on August 30, 2022, there were still scales of a significant size on the ceiling of the area, with a crack running through which showed where the material had fallen. Tr. I-159-161, I-163. There were only two cones and a barrel remaining in the area, and the caution tape was partially buried on the ground with a large piece of salt that had fallen from the scale on top of it. Tr. I-145-146, I-149-150; Ex. P-32. In that condition, the barricade that had been constructed was no longer effective because it did not prevent miners from accessing the area. Tr. I-151, I-158. Morton Salt was actively mining in an area to the right of 23-H, and there were tracks from small and large vehicles nearby. Tr. I-152, I-157-158. Miners would need to travel within ten feet from where the material fell. Tr. I-152. While roof bolts were installed in this area, roof bolts are not designed to prevent scales from forming or from falling. Tr. I-164.

Robert Segura, one of the employees who first identified the scales, testified that he had barricaded the area using four cones and red tape. Tr. I-287-288. This area experienced a high frequency of travel, with miners traversing both by vehicle and on foot multiple times throughout the day. Tr. I-291-292. He had seen the red tape still up five to six times prior to the citation, but on the day of the inspection, he confirmed that the tape was no longer up and two cones were missing from the area. Tr. I-297-298, I-304-305. Another Morton Salt miner, Quinn Norwood,

also testified that the tape should be up to be considered a sufficient barrier. Tr. II-105. He removed the scales in 23-H and stated that it took three to four minutes and a great deal of force to detach the scale. Tr. II-98-100. Based on this information, which was only acquired when the hazard was finally addressed, he believed that the scale did not pose a danger to miners because he did not think that the scale could have fallen on its own. Tr. II-99-100.

ii. Fact of Violation

Olivier issued 104(a) Citation No. 9676605 on August 30, 2022, which alleged:

Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. There was loose ground found along the primary escape route in 23H on the 1500' level. The loose was approximately 20ft high on ceiling and it had appeared that a piece had already fallen on its own. There was a tag and tape dated 7/11/2022 on ground half buried under already fallen loose. This area is traveled daily by miners working the bench top and weekly by management for inspections. This condition exposes miners to injuries if the loose were to fall while miners are traveling in the area.

Standard 57.3200 was cited 80 times in two years at mine 1600970 (80 to operator, 0 to a contractor).

Ex. P-31-1; Tr. I-145.

Olivier designated the citation as a significant and substantial violation of 30 C.F.R. § 57.3200 that was reasonably likely to cause an injury that could reasonably be expected to be “fatal,” would affect one miner, and was caused by Respondent’s high negligence. Ex. P-31-1.

30 C.F.R. § 57.3200 states that “[g]round conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry.” The scales in 23-H clearly constituted a hazard to persons and travel was still permitted through the area at the time of the citation. As such, there was a violation of 30 C.F.R. § 57.3200.

iii. Gravity and S&S

The inspector designated the citation as reasonably likely to cause an injury because the area was not barricaded and did not prevent miners from traveling through the area, which was an active working area. Tr. I-164. The type of injury was assigned permanently disabling because the material was falling from a height of twenty feet and could cause head, neck, and back injuries. Tr. I-165. The inspector deemed that the operator’s negligence was high because the condition had existed for over a month on a primary escape route without being addressed. Tr. I-165. I affirm these designations.

I have already found that there has been a violation of a mandatory safety standard. Regarding the second step, Morton Salt argues that a barrier had been placed to prevent miners from accessing the area and the scales were difficult to remove, making it unlikely that a scale would fall onto a miner. However, the testimony demonstrated that miners were traveling through this area multiple times a day and there was evidence that a piece of the scale had already fallen. While there may have been a sufficient barrier at one point, this was not the case when the citation was issued because of the missing cones and the fallen caution tape. This barrier no longer served to prevent access to the area. I find that the occurrence of the hazard is reasonably likely to occur. If a scale were to fall on a miner, it is reasonably likely that it would result in a serious injury. I affirm the S&S designation.

The testimony also demonstrates that miners were traveling through the area multiple times a day. The scales were identified over a month prior to the citation, and there was no effort by the operator to remove or ascertain the danger presented by the scales. Additionally, there was evidence that part of the scale had already fallen.

iv. Negligence

The inspector marked that the operator's negligence was high. Morton Salt argues that the area had been taped off, their training regarding the hazards of scales, and the engagement of contractors to handle scales should reduce their negligence to moderate. Resp. Br. at 31-32. The scales, however, were identified over a month prior to the citation and there was no effort by the operator to remove or ascertain the danger presented by the scales. I find that because this was a heavily used travel way and the existence of these dangerous conditions for a significant period of time, as well as the fact that the barrier was ineffective, do not support reducing the negligence determination. I affirm the negligence as high.

E. Citation No. 9673757

i. Factual Background

On August 30, 2022, Inspector Clark was conducting a quarterly E-01 inspection at Weeks Island. Tr. I-21-22. While inspecting the motor control center ("MCC"), he saw folded-up matting on the floor creating a trip hazard. Tr. I-22-23, I-33. The slick side of the matting was face up, while the anti-slip side was face down. Tr. I-26-28; Ex. P-23-1, Ex. P-24-1. There were footprints across the mat, indicating that someone had walked across it in that condition. Tr. I-24. Before turning on the lights, the MCC was completely dark, and the condition was not easily visible. Tr. I-24. There was a functional light switch near only one of the two entrances to the MCC. Tr. I-23-24, I-48. If a miner were to enter through the door without a functional light switch, they would be reliant on the cap light to be able to see and avoid the hazard. Tr. I-23-24.

No one traveling with the inspector could speak to how long the condition had existed that way or when the mat had been stepped on. Tr. I-36. The inspector testified that Landon Olivier, a member of Morton Salt management, told him that the condition had existed that way for "multiple shifts." Tr. I-45. The inspector looked through the workplace exams and did not find that the condition had been reported. Tr. I-35; Ex. R-J. He determined that the condition had existed for more than one shift. Ex. P-21. Initially, the inspector marked the violation as unlikely,

but on further reflection he changed his mind and marked the violation as reasonably likely based on the footprints on top of the mat. Tr. I-38-39. He made the revision on the same day he issued the citation, and he testified that he communicated the change to Morton Salt's representatives. Tr. I-39.

The MCC is used to store variable frequency drives, locks, and other pieces of electrical equipment. Tr. I-29, Tr. II-49. Based on the inspector's experience, he determined that a miner would need to access this area to perform maintenance and to access equipment necessary to lock out machinery or vary the speed of a motor. Tr. I-31. The number of times a day a miner could access the room varies, from multiple times per day to once per week. Tr. I-31. Because miners would expect the floor of the MCC to be clear, a miner would not necessarily be alert to the tripping hazard, especially in the event of an emergency. Tr. I-38.

Landon Olivier, the site safety trainer, was accompanying the inspector when he issued the citation for the matting in the MCC and confirmed that the mat was folded over and that there were footprints on top of it. Tr. II-48-49, Tr. II-50. He testified that he did not know when the footprints on the mat were created, but the footprints did not look freshly made. Tr. II-50-51. The hazard had not been reported on the workplace examination cards. Tr. II-52-53; Ex. R-J.

ii. Fact of Violation

Inspector Clark issued 104(a) Citation No. 9673757 on August 30, 2022, which alleged:

At the screen tower one MCC the electrical insulated matting was rolled up laying across the floor. This created a trip hazard. Foot prints were present on top of the matting where miners had been walking on the bottom of the side of the matting. The matting had been this way for more than one shift. Miners access this area as needed to lock equipment out. The MCC lights were turned off at time of inspection. This condition exposed miners to slip trip fall injuries.

Photo Taken

Standard 57.20003(a) was cited 24 times in two years at mine 1600970 (24 to the operator, 0 to a contractor).

Ex. P-21-1; Tr. I-32.

Clark designated the citation as a significant and substantial violation of 30 C.F.R. § 57.20003(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. P-21-1.

30 C.F.R. § 57.20003(a) states that "[at] all mining operations – [w]orkplaces, passageways, storerooms, and service rooms shall be kept clean and orderly." It is undisputed that the folded-up matting constituted a violation of this standard.

iii. Gravity and S&S

The inspector issued a citation for the matting, determining that its condition could reasonably be expected to cause slip, trip, and fall injuries such as sprains and broken bones. Tr. I-34. Those types of injuries would result in lost workdays or restricted ability to work. Tr. I-34-35. I affirm these designations.

The violation was also marked significant and substantial. The first step of the S&S analysis has been met. The inspector identified the discrete safety hazard as trips and falls. It is reasonably likely that in a room like the MCC, miners would not anticipate encountering folded up matting on the floor. The likelihood of the hazard occurring is increased because the room is dark and there is a functional light switch near only one of the two entrances. The footprints traversing the mat show that miners have already walked across the mat in that condition, exposing them to the hazard. I find that it is likely that a trip or fall could lead to a bad sprain or a broken bone that would reasonably cause the miner to miss work or be placed on restricted duty. I affirm the inspector's gravity and S&S determinations for this citation.

iv. Negligence

The inspector assigned the violation as moderate negligence because it had not been reported, was not on the workplace exams, and had existed for a long period of time. Tr. I-35. Morton Salt contends that the negligence should be lowered to low because of their housekeeping training and the fact that the condition was missing from the workplace examination cards, which the Respondent alleges shows that management was not aware of the issue. Resp. Br. at 38-39. While it is true that this hazard does not appear on the workplace examination cards, that fact leads to the conclusion that the cards were inaccurately completed. There were footprints across the mat and the inspector was told during the inspection by management that the condition had existed in that state for some time indicating management's awareness of the condition. I affirm the moderate negligence determination.

F. 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 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. 9649738, the Secretary proposed a regularly assessed penalty of \$19,026.00. Morton Salt has an extensive history of these violations, as there were over 30 citations for a violation of this standard issued in the 15 months prior to this citation. The parties stipulated that this penalty will not impact Morton Salt's ability to continue in business. I find that this S&S violation was reasonably likely to result in a fatal injury and was the result of Morton Salt's high negligence. Morton Salt demonstrated good faith by abating the condition the following day. In light of these considerations, I find that the proposed penalty of \$19,026.00 is appropriate.

For Citation No. 9649739, the Secretary has proposed a penalty of \$7,285.00. Morton Salt has a history of 3 previous violations of this standard. The parties stipulated that this penalty will not impact Morton Salt's ability to continue in business. I find that this S&S violation was reasonably likely to result in a fatal injury and was the result of Morton Salt's high negligence. Morton Salt demonstrated good faith by abating the condition the following day. In light of these considerations, I find that the proposed penalty of \$7,285.00 is appropriate.

For Citation No. 9676603, the Secretary proposed a regularly assessed penalty of \$2,194.00. Morton Salt does not have a significant history of previous violations. The parties stipulated that this penalty will not impact Morton Salt's ability to continue in business. I find that this S&S violation was reasonably likely to result in a fatal injury and was the result of Morton Salt's moderate negligence. Morton Salt demonstrated good faith by abating the condition the following day. In light of these considerations recognizing the reduced negligence level from high to moderate, I find that a penalty of \$1,400.00 is appropriate.

For Citation No. 9676605, the Secretary proposed a regularly assessed penalty of \$8,549.00. Morton Salt has an extensive history of these violations, as there were over 30 citations for a violation of this standard issued in the 15 months prior to this citation. The parties stipulated that this penalty will not impact Morton Salt's ability to continue in business. I find that this S&S violation was reasonably likely to result in a fatal injury and was the result of Morton Salt's high negligence. Morton Salt demonstrated good faith by abating the condition the following day. I have considered the representations and documentation submitted and conclude that due to the six-week delay in correcting the condition a penalty of \$10,000.00 is appropriate under the criteria set forth in Section 110(i) of the Act.

For Citation No. 9673757, the Secretary proposed a regularly assessed penalty of \$1,253.00. Morton Salt has a history of over 10 previous violations. The parties stipulated that this penalty will not impact Morton Salt's ability to continue in business. I find that this S&S violation was reasonably likely to result in lost workdays or restricted duty and was the result of Morton Salt's moderate negligence. Morton Salt demonstrated good faith by abating the condition the following day. In light of these considerations, I find that the proposed penalty of \$1,253.00 is appropriate.

Listed below is a summary of the penalty amounts for the adjudicated citations.

Citation/ Order No.	Originally Proposed Assessment	Judgment Amount	Modifications
9649738	\$19,026.00	\$19,026.00	Affirm as Issued
9649739	\$7,285.00	\$7,285.00	Affirm as Issued
9676603	\$2,194.00	\$1,400.00	Modify Negligence from “High” to “Moderate” Reduction in Payment
9676605	\$8,549.00	\$10,000.00	Increase in Payment
9673757	\$1,253.00	\$1,253.00	Affirm as Issued
SUBTOTAL	\$38,307.00	\$38,964.00	

G. PARTIAL SETTLEMENT

The parties have filed a motion to approve partial settlement regarding the twenty-five settled citations. The originally assessed amount for these twenty-five actions was \$75,082.00 and the settlement amount is \$39,018.00. The settlement includes:

Citation/ Order No.	Originally Proposed Assessment	Settlement Amount	Modifications
9649647	\$1,471.00	\$318.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify S&S from “Yes” to “No” Reduction in Payment
9649674	\$321.00	\$143.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Reduction in Payment
9649723	\$5,290.00	\$1,252.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Reduction in Payment
9649715	\$144.00	\$144.00	Affirm as Issued
9649721	\$5,290.00	\$1,252.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Reduction in Payment

Citation/ Order No.	Originally Proposed Assessment	Settlement Amount	Modifications
9649725	\$2,194.00	\$477.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant and Substantial from “Yes” to “No” Reduction in Payment
9649726	\$1,471.00	\$318.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Reduction in Payment
9649730	\$442.00	\$442.00	Affirm as Issued
9649731	\$442.00	\$0.00	Vacate
9649797	\$2,194.00	\$2,194.00	Affirm as Issued
9676607	\$19,026.00	\$19,026.00	Affirm as Issued
9673759	\$987.00	\$987.00	Affirm as Issued
9676611	\$5,731.00	\$1,246.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Reduction in Payment
9676621	\$8,549.00	\$8,549.00	Affirm as Issued
9676622	\$987.00	\$0.00	Vacate
9676616	\$7,285.00	\$143.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Modify Negligence from “High” to “Moderate” Reduction in Payment
9676617	\$2,194.00	\$214.00	Modify Negligence from “High” to “Moderate” Reduction in Payment
9676631	\$661.00	\$661.00	Affirm as Issued
9676632	\$661.00	\$143.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Reduction in Payment
9676636	\$133.00	\$133.00	Affirm as Issued
9676637	\$133.00	\$133.00	Affirm as Issued
9676638	\$133.00	\$133.00	Affirm as Issued
9676639	\$133.00	\$133.00	Affirm as Issued

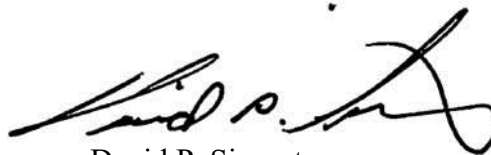
Citation/ Order No.	Originally Proposed Assessment	Settlement Amount	Modifications
9648950	\$8,549.00	\$834.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Modify Negligence from “Moderate” to “Low” Reduction in Payment
9674865	\$661.00	\$143.00	Modify Injury/Illness from “Reasonably Likely” to “Unlikely” Modify Significant & Substantial from “Yes” to “No” Reduction in Payment
SUBTOTAL	\$75,082.00	\$39,018.00	
<u>TOTAL</u>	\$113,389.00	\$77,982.00	

The Secretary has vacated Citation Nos. 9649731 and 9676622. The Secretary’s discretion to vacate a citation or order is not subject to review. *See, e.g., RBK Constr. Inc.*, 15 FMSHRC 2099 (Oct. 1993).

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.

H. ORDER

It is hereby **ORDERED** that Citation Nos. 9649738, 9649739, 9673757, and 9676605 are **AFFIRMED** as issued and that Citation No. 9676603 is modified to reduce the negligence to moderate. Morton Salt, Inc., is **ORDERED** to pay the Secretary the total sum of \$77,982.00 within 40 days of this order.²



David P. Simonton
Administrative Law Judge

² 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.

Distribution: (Electronic and Certified mail)

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