FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner, v. MORTON SALT INC, Respondent.	CIVIL PENALTY PROCEEDING Docket No. CENT 2022-0176 A.C. No. 16-00970-554937 Mine: Weeks Island Mine and Mill

DECISION AND ORDER

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

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

Before: Judge Simonton

I. INTRODUCTION

This case is before me upon a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration (MSHA), against Morton Salt Inc ("Morton Salt" or "Respondent") pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. ("Mine Act"). This docket contains 14 citations and orders issued to Morton Salt, seven of which were settled before hearing. The parties presented testimony and evidence at a hearing held in Lafayette, Louisiana on January 24-25, 2023, and subsequently submitted post-hearing briefs.[1] For the reasons discussed below, I affirm Citation No. 9649679 as written, affirm Citations Nos. 9649663 and 9649667 with modifications, and vacate the four remaining citations and orders. I assess a total penalty of $12,161.00 for the seven citations and orders that were litigated.

[1] In this decision, the joint stipulations, transcript, Secretary's exhibits, Respondent's exhibits, Secretary's post-hearing brief, and the Respondent's post-hearing brief are abbreviated as "Jt. Stip.," "Tr.," "Ex. S–#," "Ex. R–#," "Sec'y Br.," and "Resp. Br.," respectively. Respondent's rebuttal exhibits are abbreviated as "Ex. R-R#".

II. STIPULATIONS OF FACT

1. Respondent is an operator within the meaning of the Mine Act.

2. Morton Salt, Weeks Island Mine and Mill, Mine I.D. No. 16-00970, is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq.

3. The Administrative Law Judge has jurisdiction in this matter.

4. The total proposed penalty of $40,786.00 for Docket No. CENT 2020-0176 will not affect Respondent's ability to continue in business.

5. The citations were properly served by a duly authorized representative of the Secretary upon an agent of Morton Salt, on the date and place stated therein, and may be admitted into evidence for the purpose of establishing its issuance, and not for the truthfulness or relevancy of any statements asserted therein.

6. Respondent is engaged in mining activities, and its mining operations affect interstate commerce.

7. The parties have settled Citations Nos. 9647379, 9647388, 9649660, 9649668, 9649670, 9649672, and 9649680.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Morton Salt operates the Weeks Island Mine and Mill, a large underground salt mine located near Lafayette, Louisiana. Morton Salt miners descend over one thousand feet underground to access and extract salt from a subterranean rock formation known as a salt dome. Tr. 81. The Weeks Island mine is a "gassy" mine with a history of liberating methane from pockets of gas embedded within the salt dome. Tr. 81. MSHA categorizes the Weeks Island mine as a Subcategory II-A mine due to its documented history of methane outbursts. Tr. 198; *see* 30 C.F.R. § 57.22003.

In March of 2022, MSHA personnel arrived at the Weeks Island mine to conduct a quarterly safety and health inspection pursuant to 30 U.S.C. § 813(a). The citations and orders discussed below were among the actions issued during this quarterly inspection. Morton Salt contested these citations and orders on June 9, 2022.

A. Training (Orders Nos. 9649653, 9649654, and 9649655)

Three of the actions at issue in this case involve Morton Salt's training practices. Specifically, these three orders allege that Morton Salt failed to properly train its miners with regard to its Femco phone communication system.

i. Factual Background for Orders Nos. 9649653, 9649654, and 9649655

Femco phones are a basic means of communication underground in the Weeks Island mine. They operate on a separate power supply to ensure that they continue to function even if the mine's primary power supply fails. Ex. R-R1.[2] The phones may be used as a means of two-way communication or as an intercom. The Femco phones at the Weeks Island mine also have orange or amber lights installed above them. Mine management uses these lights and the Femco intercom feature to warn miners in the case of an emergency. Tr. 119, 489.

MSHA Inspector Brandon Olivier issued three orders on March 10, 2022, with regard to the Femco lights. Inspector Olivier testified that, on that date, he was conducting his inspection on the 1500-foot level of the mine while accompanied by miner representative Classie Charles and Morton Salt safety specialist Kellie Munger. He noticed an orange light flashing above a Femco phone and asked three nearby miners—Larry Welch, Kennedy Tauriac, and Randy Jackson, Jr.—if they knew what the flashing light signified. Tr. 201-02. Welch and Tauriac said that they did not know. Jackson said that the light signified a dead battery. Tr. 204-05.

Later, Inspector Olivier encountered miners Kelly Huval and Doug Freeman and asked them if they knew the meaning of the flashing Femco light. At hearing, Huval testified that he had learned in his new miner training that the flashing light could signify a methane or non-methane emergency. Tr. 352, 363. Huval noticed the flashing light earlier in his shift and asked the more-experienced miner Jackson whether the light signaled an emergency. Jackson told him no, that someone on the previous shift had relayed that the flashing light simply indicated a dead battery. Huval took Jackson's word for it and answered Inspector Olivier's question by saying that the flashing Femco light signified a dead battery.[3] Tr. 225. Freeman told Inspector Olivier that he did not know the significance of the flashing light. Tr. 225.

Inspector Olivier then met with several experienced miners. Among the miners, Inspector Olivier determined that Wendell Brown, Bryson Ford, and Ryan Lovett did not know that a flashing light signified a mine emergency, even though all three miners had just received training the previous day. Tr. 230. Brown told Inspector Olivier that the flashing light signified a dead battery after learning this from a veteran miner earlier in the day. Tr. 30, 230. Brown testified that in all previous evacuation drills, there was always an audible alarm or audible direction to evacuate the mine emanating from the Femco phone, repeated over and over again. Tr. 41.

Inspector Olivier withdrew these eight miners from the mine, and Morton Salt immediately began retraining the miners on the Femco system to terminate the order. Landon Olivier, mine safety trainer, testified that he questioned the cited miners when they came to the

[2] Ex R-R1 denotes a rebuttal exhibit.

[3] Huval also testified that after Inspector Olivier told him that the light did not signify a dead battery, Huval was about to tell him it could signify an emergency when his miner's representative jumped in and said that the light signified methane. Inspector Olivier quickly told the representative, "No, you can't tell him." Huval felt nervous after that and did not offer any further comments. Tr. 361-62.

surface about the meaning of the light and "as a group, it was blurted out, 'Well, it depends. It's methane, emergency, evacuation. It could mean a number of things.'" Tr. 485.

At hearing, Morton Salt offered evidence of its training program. Landon Olivier testified that Morton Salt trains all of its miners regarding the Femco phones and their role in the mine's emergency protocol. He pointed to the mine's safety handbook, which expressly outlines that the "evacuation alarm" consists of either a "loss of electrical power in conjunction with flashing lights and an audible alarm from all Femco phones" or "[f]lashing lights and an audible alarm from all Femco phones without a loss of electrical power." Ex. R-A at 2; Tr. 481-82. Landon Olivier verbally reviews this portion of the handbook with all new miners and experienced miners, and for refresher training. Tr. 481; *see* Ex. R-A (video exhibit marked Morton 00050). Morton also presents a site-specific video for all miners that explains the Femco system and reviews the evacuation procedure: "In the event that it becomes necessary to evacuate the mine, there will be an emergency sounding of sirens and the flashing of amber lights. Upon hearing and seeing the signal or in the event of a power failure, everyone must evacuate the mine immediately." Ex. R-R1.

Landon Olivier testified that Morton Salt also provides hands-on training. Training officials have a disconnected Femco phone that is used to demonstrate how to use the underground communication system. Tr. 477. He said that Morton Salt provides "step-by-step hands-on training" in the field when giving mine tours to miners. Tr. 482.

ii. Fact of Violation (Order No. 9649653)

Order No. 9649653 alleges a violation of 30 C.F.R. § 48.8(b)(2), which requires in relevant part that an operator's "annual refresher training program for all miners shall include . . . instruction on . . . the use of the mine communication systems [and] warning signals." The order describes a violation of section 48.8(b)(2) as follows:

> Three miners working in the mine have not received adequate annual refresher training on the communication systems. The course shall include instruction on the procedures and the use of the mine communication systems, and warning signals. Refresher training was last given to these miners in October 2021. The training that the miners received on the escape and evacuation plan was inadequate. The mine operator was aware of the training requirements. The operator is hereby ordered to withdraw the 3 miners from the mine until they have received the required training. The Federal Mine Safety and Health Act of 1977 declares that an untrained miner is a hazard to himself and to others.

Pet. for Assessment of Civ. Penalty at 19 (hereinafter "Pet."). Inspector Olivier found that the operator's inadequate refresher training regarding the Femco phones was reasonably likely to produce an injury or illness that could be expected to be fatal. Pet. 19. He designated this order as significant and substantial ("S&S") and moderate negligence. Pet. 19.

The Secretary acknowledges that Morton Salt provided refresher training, and that the training involved information on the Femco phones. This training is well documented. *See* Ex.

R-A at 5-16. The Secretary argues, however, that the training was inadequate because "it did not ensure Larry Welch, Kennedy Tauriac, and Randy Jackson [Jr.] knew the flashing [F]emco lights signaled an evacuation." Sec'y Br. at 15.

The Secretary's argument falters for two reasons. First, the Secretary's finding of inadequate training rests entirely upon the inspector's conversations with miners. According to Inspector Olivier, eight of the roughly thirteen miners that he polled failed to identify that flashing Femco lights could signal an emergency. This method (an informal polling of miners) is not an ironclad way to determine the adequacy of miner training. As Judge Miller notes in a similar case, "there is not sufficient evidence for me to determine whether the miners initially received adequate training, but simply did not recall the training when asked" days or months later by the inspector. *Foothill Materials*, 35 FMSHRC 495, 499 (Feb. 2013) (ALJ). A miner's response may also be influenced by other factors, such as his subjective feelings toward the inspector or toward MSHA in general. For instance, Huval testified that his response to Inspector Olivier was affected by the inspector's admonishment of Huval's miner representative. Tr. 361-62. Answers gleaned from polling miners are "not dispositive" of training adequacy, *Foothill Materials* at 498, and the Secretary has failed to adduce any further evidence or testimony to show that Morton Salt's training was insufficient.

Second, and more crucially, the Secretary has failed to show by a preponderance of the evidence that a flashing Femco light, by itself, signals an emergency. Testimony from experienced miners agrees with the mine's written policy: a mine emergency is signaled by the combination of flashing Femco lights and an audible alarm. Tr. 127, 147, 461, 470, 489-90, 543; Ex. R-A at 23-24. A flashing Femco light by itself can indicate a dead battery—a fact that Inspector Olivier only learned after issuing the three training orders. Tr. 281-82. The inspector admitted that there was no actual emergency on the date of inspection. Tr. 278. The orders were therefore issued under a false understanding of the Femco lights and their functionality.

The Secretary argues that miners should recognize the flashing lights, alone, as a signal of an emergency because the audible component of the Femco phones has previously failed at the Weeks Island mine. *See* Sec'y Br. at 20; *see also* Tr. 213-14 (Inspector Olivier's testimony about previous Femco phone failures). This point, while well-taken, seems to find flaw more in the mine's emergency protocol rather than its training protocol. The written procedure at the Weeks Island mine is that an emergency is signaled by flashing lights with an audible alarm, and the miners were trained on this procedure. *See* Ex. R-A (video exhibit marked Morton 00050); Ex. R-A at 2.[4] If the Secretary finds this emergency procedure to be deficient, she can cite Morton Salt under the appropriate standard. *See, e.g.*, 30 C.F.R. §§ 57.4360, 57.11053. But she cannot shoehorn a substantive critique of Morton Salt's emergency procedures into this alleged training violation.

Ultimately, the Secretary bears the burden of proving this alleged training violation by a preponderance of the evidence. *See RAG Cumberland Resource Corp.,* 22 FMSHRC 1066, 1070 (Sep. 2000). The evidence before me shows that Morton Salt provided adequate refresher training for the three miners in question. Morton Salt has adduced evidence of its training manual which details the Femco phone system and the emergency warning system. The

[4] A printed version of Respondent's safety handbook is in the record referenced as Ex. R-O.

company has also presented a video showing the training director discussing the emergency warning protocol in a training session. Morton Salt's training plan was submitted to, and approved by, MSHA pursuant to 30 C.F.R. § 48.4. *See* Tr. 508; Ex. R-T. The Secretary has not introduced enough evidence to prove that the training was in any way inadequate. The Secretary has therefore failed to satisfy her burden of proof, and Order No. 9649653 is **VACATED**.

iii. Fact of Violation (Order No. 9649654)

Order No. 9649654 alleges a violation of 30 C.F.R. § 48.5(b)(3), which requires that mine operators provide new miners with training that "shall include instruction on . . . the use of the mine communication systems [and] warning signals." The order describes a violation as follows:

> Two miners working in the mine have not received adequate new miner training on the communication systems. The course shall include instruction on the procedures and the use of the mine communication systems, and warning signals. New Miner training was last given to these miners in February 2022. The training that the miners received on the escape and evacuation plan was inadequate. The mine operator was aware of the training requirements. The operator is hereby ordered to withdraw the 2 miners from the mine until they have received the required training. The Federal Mine Safety and Health Act of 1977 declares that an untrained miner is a hazard to himself and to others. Entering and leaving the mine; transportation; communications.

Pet. 20. Inspector Olivier found a violation of this standard that was reasonably likely to cause a fatal injury, and he marked the alleged violation as S&S and moderate negligence. Morton Salt terminated the order one day after its issuance by providing "additional training on the Femco, Communication and lighting procedures." Pet. 20.

The Secretary again admits that Morton Salt did provide the relevant training. She alleges, however, that the training provided was inadequate, "because it did not ensure Doug Freeman and Kelly Huval understood that the flashing [F]emco light signaled an evacuation." Sec'y Br. at 16. This argument fails for the same reasons outlined in the section above.[5] The claim of inadequate training rests exclusively on polling miners about the flashing Femco light, and the Secretary has not proven that a flashing Femco light alone actually signals an emergency. In this case, the flashing light signaled a battery or wiring issue. Tr. 281. Meanwhile, the Respondent has introduced evidence that Freeman and Huval did receive new miner training on the topics of mine communication systems and warning signs. *See* Ex. R-B. Further, Huval testified that he received training on the flashing Femco light and knew that it was part of the emergency protocol, but that he did not communicate this information to the inspector for contextual reasons. *See supra*, Section III.A.ii. Aside from the inspector's informal polling, the Secretary has submitted no further evidence showing that the training was inadequate. The

[5] The facts, analysis, and findings discussed *supra* in sections III.A.i and III.A.ii are incorporated by reference here.

Secretary has failed to show by a preponderance of the evidence that Morton Salt has violated section 48.5(b)(3). Accordingly, Order No. 9649654 is **VACATED**.

iv. Fact of Violation (Order No. 9649655)

Order No. 9649655 alleges a violation of 30 C.F.R. § 48.6(b)(4), which requires an operator to provide training for experienced miners that "shall include instruction in . . . the use of the mine communication systems [and] warning signals." The order describes a violation as follows:

> Three miners working in the mine have not received adequate experienced miner training on the communication systems. The course shall include instruction on the procedures and the use of the mine communication systems, and warning signals. Experienced miner training was last given to these miners in March 2022. The training that the miners received on the escape and evacuation plan was inadequate. The mine operator was aware of the training requirements. The operator is hereby ordered to withdraw the 3 miners from the mine until they have received the required training. The Federal Mine Safety and Health Act of 1977 declares that an untrained miner is a hazard to himself and to others.

Pet. 21. Inspector Olivier determined that the violation of this standard was reasonably likely to produce an injury that could be expected to be fatal. He marked the order as S&S and moderate negligence. Morton Salt terminated the order on the date of issuance by providing the three miners with additional training. Pet. 21.

Once again, the Secretary admits that Morton Salt provided the relevant training but claims that the training was inadequate because the miners polled did not know that a flashing Femco light signaled an evacuation. Sec'y Br. at 16. And once again, I disagree.[6] The Respondent has introduced documentary and testimonial evidence showing that the three miners did receive training on mine communication systems and warning signals. *See* Ex. R-C. Wendell Brown acknowledged at hearing that he received these trainings. Tr. 44-48. A miner's remark that, "I think we could have gotten a little bit more training on it," does not prove that the training was inadequate. There is simply more evidence in the record supporting the adequacy of the training than showing its inadequacy. I find that the Secretary has again failed to establish a violation by the preponderance of the evidence. Order No. 9649655 is **VACATED**.

B. Ventilation Doors (Citation No. 9647382)

On March 16, 2022, MSHA Inspector O'Neal Robertson issued Citation No. 9647382 alleging a violation of 30 C.F.R. § 57.8531(c), which requires that "[v]entilation doors shall be . . . [m]aintained in good condition." The citation describes a violation as follows:

[6] The facts, analysis, and findings discussed *supra* in sections III.A.i, III.A.ii, and III.A.iii are incorporated by reference here.

> The large door to access the #3 shaft station on the 1400' level was found not fully constructed all the way to re-establish normal ventilation to the working places. The door when closed allowed air to pass through the cracks. This condition exposes miners working in the mining areas to bad air or the lack of. Miners access this area as needed.

Pet. 16. Inspector Robertson designated the alleged violation of this standard as non-S&S and moderate negligence. He found that the cited conduct was unlikely to cause an injury or illness that could cause lost workdays or restricted duty. Pet. 16.

i. Factual Background

Inspector Robertson issued the citation after conducting an inspection on the 1400-foot level of the Weeks Island mine. During the inspection, Inspector Robertson referenced the mine map provided by Morton Salt. Tr. 173. Morton Salt had last updated this mine map on December 20, 2021. *See* Ex. S-5 at 1. The map showed a door near the No. 3 Production Shaft that was labelled "D/R." Ex. S-5 at 1. The map's legend indicated that "D" signified a "Door Airlock" and "R" signified a "Regulator." Ex. S-5 at 1. These two different types of doors—an airlock and a regulator—perform opposite functions. An airlock door is designed to completely seal a doorway when closed, and a regulator door is designed to permit some airflow when desired. Tr. 419.

Inspector Robertson examined the door at this location and determined that, contrary to the mine map, the door near the No. 3 Production Shaft was not an airlock door. Accordingly, he issued Citation No. 9647382. Within two days of this citation's issuance, Morton Salt terminated the action by issuing a new mine map that indicated this door on the map only as "D" and changed the legend to indicate that "D" represented a "Door." Pet. 17; Ex. R-E at 2; Tr. 179-80. No physical modifications to the door were required to terminate the citation. Tr. 188.

Eric Gaudreau, mine engineer, testified that the door in question was installed next to the No. 3 shaft, which is on the exhaust side of the mine. Morton Salt installed the door for use as a regulator to control air flow through the area. Tr. 419. The door was specifically designed with extra slots to allow air to travel through. Tr. 421; *see also* Ex. S-3 at 1. Gaudreau testified that the door was in good condition at the time of inspection and that it has not been physically changed or modified after issuance of the citation. Tr. 422. Gaudreau admitted that the door was mislabeled as an airlock door on the map. Tr. 420.

ii. Fact of Violation

The Secretary argues that the cited standard "requires operators to maintain ventilation doors according to their designation within a ventilation plan." Sec'y Br. at 11. I disagree. Section 57.8531 is entitled "Construction and maintenance of ventilation doors." The text of the standard, excepted above, requires in full that:

> Ventilation doors shall be—(a) Substantially constructed; (b) Covered with fire-retardant material, if constructed of wood; (c) Maintained in good condition;

(d) Self-closing, if manually operated; and (e) Equipped with audible or visual warning devices, if mechanically operated.

30 C.F.R. § 57.8531. Clearly, this standard governs the physical construction and maintenance of mine ventilation doors. Nowhere does the standard reference a ventilation plan or require that the door's construction match the plan's designation. The standard is not ambiguous, and it therefore cannot accommodate the Secretary's far-reaching interpretation.[7]

The Secretary has alleged a violation of section 57.8531(c) but has failed to introduce any evidence that the door was maintained in poor condition. The door was simply mislabeled on the mine map. This error has nothing to do with the maintenance of the door. The Secretary has therefore failed to prove a violation under the cited standard. Accordingly, Citation No. 9647382 is **VACATED**.

C. Ground Conditions (Citation No. 9649663)

On March 16, 2022, Inspector Olivier issued Citation No. 9649663, which alleges a violation of 30 C.F.R. § 57.3200. The cited standard requires 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" and that, "[u]ntil 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." 30 C.F.R. § 57.3200. The citation described the violation of the standard as follows:

> There was loose ground found along the north rib behind the [E]lectrical equipment in 11C. The area had caution tape up with 2 tags identifying the scales. One tag was dated January 2021 and the other dated June 2021. It is evident from the footprints in the area that the miners were still traveling around the caution tape into the hazardous area. This condition exposes miners to serious injuries if the scales were to fall while the miners are in the area. Standard 57.3200 was cited 52 times in two years at mine 1600970 (52 to the operator, 0 to a contractor).

Pet. 23. Inspector Olivier found that the cited conduct was reasonably likely to produce an injury that could reasonably expected to be fatal. He marked it as S&S and high negligence.

i. Factual Background

The area in question is adjacent to the MCC, which is a control room containing the breakers and power controls for the equipment in the screen plant. Tr. 87. Two miners staff the MCC building during each shift. Tr. 87. The MCC is accessed via the mine roadway. Tr. 165. Just down the road, the mine had constructed a berm to protect against a steep drop-off. Tr. 139.

[7] To the extent that the Secretary seeks deference for her interpretation of this standard, I find that it is not warranted. The text of the standard is not "genuinely ambiguous" and therefore does not merit deference. *See Kisor v. Wilkie*, 139 S.Ct. 2400, 2415 (2019).

Between the berm and the MCC sat a freestanding transformer box and a wooden storage box. Tr. 139, 245.

Inspector Olivier testified that he observed "loose ground"[8] on the wall behind the transformer and the wooden storage box. Tr. 239. He documented a 20'x20' slab of salt that had separated from the wall. Tr. 243, 309; Ex. S-10. At least two sides of the slab were "not intact." Tr. 309. Inspector Olivier testified that, in general, scale needs to be taken down when it is broken or cracked on more than one side because the cracking could impact its stability. Tr. 241. According to Inspector Olivier, certain conditions such as the looseness of the material might contribute to a scale falling, but such events are often unpredictable. Tr. 241.

Inspector Olivier also testified that the area near this scale was not fully barricaded and had been recently accessed by miners. About "half" of the area between the berm and the MCC was taped off, according to Inspector Olivier. Tr. 239. The other half remained unbarricaded. Tr. 239. During his inspection, Inspector Olivier encountered footprints leading from the roadway to the area behind the MCC, near a table and storage box. Tr. 244. He also documented evidence showing that a miner had recently urinated in the area near the storage box. Tr. 249; Ex. S-12. Inspector Olivier testified that the urine mark was "pretty much right under where the scales was located." Tr. 249-50. He opined that if the scale had fallen, the area marked by footprints and urine would have been within the "zone of danger" presented by the ground conditions. Tr. 252. Further, he testified that the transformer box was roughly 15 feet from the edge of the scale and also fell within the zone of danger. Tr. 252.

Lee Franks, the mine's safety supervisor, testified that the area had been barricaded due to the presence of scale dating back to January 2021. Tr. 95-96. Franks identified two separate "substantial scales" in the area. Tr. 95. Franks described the scale closer to the MCC building as a "substantial bulge" with a "crack on one side of the scale." Tr. 96. He said "[t]here was no crack on top of the other side" of this first scale. Tr. 96. The second scale was located closer to the berm. Tr. 95.

According to Franks, Morton Salt identified the "potential scales" at least fourteen months before the citation was written. Tr. 96. Morton Salt did not descale the area immediately due to the presence of the transformer. The company's electricians did not typically work on this transformer, and so Morton Salt needed to hire outside contractors to move the transformer before the descaling work could be done. Tr. 96. Franks testified that during the COVID-19 pandemic, it became very difficult to get an outside contractor to perform the necessary work. So, Franks testified, Morton Salt decided to close off the area until the contract work could be procured. Tr. 96-101. Morton Salt used "red danger tape" to effectuate the closure and hung a tag indicating the "actual hazard" in the area. Tr. 101, 158. The tape ran from the berm area to a small table between the berm and the MCC. Tr. 160; ex. R-R2. Franks testified that roughly 8 to 10 feet of area remained unbarricaded because it was "easiest" to secure the end of the tape to the table. Tr. 159-160.

[8] The court reporter erroneously transcribed this phrase as "lose ground." Tr. 239.

Franks accompanied Inspector Olivier as he inspected the scales. Tr. 86. He witnessed the footprints and the urine mark documented during the inspection. Tr. 109, 137. Franks testified that the urine mark was approximately 40-45 feet from the scale closest to the berm and 25 feet from the scale closest to the MCC. Tr. 140-41. He also testified that no miner should need to access the transformer or anything else in the area unless there was a major electrical issue with the "whole mine power," because "any electrical work they would have done to get anything in the screen plant running again would have been done in the MCC." Tr. 146.

Franks also described the subsequent descaling efforts in the area. In order to terminate Citation No. 9649663, Morton Salt removed the transformer from the area so that the scales could be addressed. Tr. 144. Franks testified that the scale closest to the MCC was "bar tight," meaning that no material was loosened from the wall when he tried to pry it off with a 6-foot or 12-foot scaling bar. Tr. 143; *see also* Tr. 133. Franks and his team had to scrape the material off with a mechanical scaler. Tr. 145. According to Franks, descaling resulted in about "two, two and a half buckets" of salt being loosened from the wall. Tr. 144.

ii. Fact of Violation

In order to prove a ground control violation, the Secretary must prove by a preponderance of the evidence (1) that a ground control hazard existed and (2) that the operator failed to address the hazard by taking it down, supporting it, or posting it against entry and barricading it while unattended. *See* 30 C.F.R. §57.3200. I find that the Secretary has successfully made such a showing here.

First, I find that the Secretary has shown the existence of a hazard. Inspector Olivier testified that he encountered a 20'x20' slab of scale that was separating from the wall on at least two sides.[9] Tr. 243, 309; Ex. S-10. This is supported by photographic evidence. Ex. S-13. In Inspector Olivier's professional opinion, scale that is separating or cracked on more than one side presents a hazard and should be removed. Tr. 241. Inspector Olivier further testified that blasting, which takes place three to five times a week, could shake rock loose and thus contribute to the hazard. Tr. 241-42. Inspector Olivier has conducted over 500 inspections, including over 50 at the Weeks Island mine, during his 13 years as an inspector with MSHA. Tr. 195-97. Before joining MSHA, he worked in production at another underground salt mine. Tr. 195. An experienced MSHA inspector's opinion that a hazard exists is entitled to substantial weight. *Buck Creek Coal Inc. v. MSHA*, 52 F.3d 133, 135 (7th Cir. 1999); *Harland Cumberland Coal Co.*, 20 FMSHRC 1275, 1278-79 (Dec. 1998). Accordingly, I credit Inspector Olivier's testimony.

Morton Salt argues that no hazard existed because there was no loose rock, as evidenced by Lee Franks' testimony that the scale was "bar tight." Resp. Br. at 43. While I find Franks' testimony to be largely credible, I do not believe an operator's plain statement that the material was "bar tight" can defeat the inspector's hazard determination. Franks admitted that "there [were] two scales that[] I would consider substantial scales." Tr. 95. Morton Salt's own training

[9] Franks testified that the scale was only cracked on one side. Tr. 96. The photographic evidence tends to support the inspector's contention that the scale was separating from the wall on at least two sides. Ex. S-13. I credit the inspector's testimony on this point.

materials recognize that the "inability to predict when they may fall makes scales one of the most serious hazards in mining." Ex. S-41 at 7. This comports with Inspector Olivier's testimony regarding the unpredictability of scales in a salt mine. Tr. 241. Given the presence of scales and the unpredictable nature of salt scales, it is possible for a hazard to exist even when the operator alleges the scale was "bar tight."

The inspector relied on objective indicators of looseness (the number of cracked sides) and documented the hazard to the extent possible. In my analysis, I have considered the "visible fractures" and the "operating experience of the mine" to determine whether the ground conditions are hazardous. *Asarco, Inc.*, 14 FMSHRC 941, 952 (June 1992). This mine has been cited 52 times in two years for hazardous ground conditions, and the scale here was fractured in two places which, in the inspector's experience, was unsafe. I therefore find that the ground conditions were indeed hazardous.

Second, I find that Morton Salt failed to install a sufficient barrier to impede unauthorized entry to the hazardous area. It is undisputed that Morton Salt failed to barricade at least 8-10 feet of the area and that miners were traveling in the area. A miner could (and at least one miner did) freely walk into the section of the mine that featured hazardous ground conditions. Therefore, the second prong of the test has been met. Citation No. 9649663 is **AFFIRMED** as modified below.

iii. Gravity and S&S

Inspector Olivier determined that the mine's failure to barricade the hazardous condition was reasonably likely to cause an injury, and that the injury could be expected to be fatal. He marked the citation as S&S.

I affirm the finding that the expected injury would be fatal. Inspector Olivier testified that the scale was comprised of a 20'x20' slab of rock. Lee Franks testified that two and a half buckets worth of material fell when the area was descaled. Miners had been traveling in the zone of danger in the event that the scale fell, according to Inspector Olivier. If multiple buckets of salt fell on an individual, the anticipated injury is reasonably categorized as fatal.

However, I disclaim the inspector's likelihood finding. There are too many factors showing the remoteness of the possible injury. Miners did not regularly access the area for their work. Tr. 146. Some of the area was barricaded, making miner ingress less likely. Tr. 100. Although at least one miner chose to relieve himself in this area, there was a portable toilet nearby that could have been used instead. Tr. 146, 165. According to Franks' testimony, the scaled salt needed to be loosened by a mechanical scaler. Tr. 144. In view of all of this evidence, I find that a fatal or even serious injury was unlikely.

In order to establish that a violation of a mandatory safety standard is S&S, 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 established a violation and therefore satisfies step 1. But the Secretary has failed to satisfy step 2 because she has not shown that the occurrence of a loose-ground hazard is reasonably likely. The danger to miners presented by the scales remained relatively remote given the facts discussed above. Accordingly, the ground-control violation was not S&S.

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). The Commission and its judges determine whether an operator has met its duty of care using a traditional negligence analysis, considering the "totality of the circumstances holistically," including "what actions would have been taken under the same circumstances by a reasonably prudent person familiar with the mining industry, the relevant facts, and the protective purpose of the regulation." *Brody Mining, LLC*, 37 FMSHRC 1687, 1702 (Aug. 2015).

Inspector Olivier determined that this violation was due to Morton Salt's high negligence because "the scale was identified two times over [one] year [and] the company did not take any steps or measures to eliminate people from entering this area." Tr. 257.

The mine operator clearly recognized a possible hazard in the area. It erected partial barricades over a year before the citation was issued. However, Morton Salt never completed the barricade during the fourteen months of its existence, due to the inconvenience of extending the tape a few more yards. Tr. 160. I find that Morton Salt was aware of the hazard, and that its reasons for not adequately barricading the hazard are weak and unavailing. I affirm the inspector's finding of high negligence.

D. Evacuation Plan (Citation No. 9649667)

On March 17, 2022, Inspector Olivier issued Citation No. 9649667 alleging a violation of 30 C.F.R. § 57.11053(c). The cited standard requires that a mine operator maintain "an escape plan for each working area in the mine [that] include[s] instructions showing how each working area should be evacuated" and mandates that "[e]ach such plan shall be posted at appropriate shaft stations and elsewhere in working areas where persons congregate." 30 C.F.R. § 57.11053(c). The citation describes a violation as follows:

> The posted escape and evacuation plan is not accurate. The primary and secondary routes for the 1200' level is not accessible. Miners are still accessing the crusher area and the road to ladder is berm[ed] and #3 shaft is not accessible for escape. Miners do not have an escape route pass #4 shaft. This condition exposes miners to

serious injuries if they have to escape in an emergency. Standard 57.11053(c) was cited 1 time in two years at mine 1600970 (1 to the operator, 0 to a contractor).

Pet. 24. Inspector Olivier determined that the cited conduct was reasonably likely to cause an injury, and that the resultant injury could be expected to be fatal. He found that the operator was highly negligent and that the violation was S&S.

i. Factual Background

Inspector Olivier performed an inspection of the 1200-foot level of the Weeks Island mine on March 17. Production had ceased on this level of the mine years before the date of the inspection, according to Inspector Olivier. Tr. 269. He nevertheless inspected this level because it was still utilized for escape purposes and accessed by miners on a regular basis. Tr. 265. Inspector Olivier testified that miners accessed the 1200-foot level "weekly" or "at least three times a month" in order to conduct methane readings, to control ventilation for the 1000-foot level, and to inspect escape routes. Tr. 265.

Inspector Olivier reviewed the mine's posted evacuation plan step-by-step and discovered that portions of the designated escapeways were "not travelable." Tr. 259. Inspector Olivier read the written plan for the primary escape route, which directed miners located at the stockpile/crusher area to "proceed up the ramp along No. 6 Belt to the crusher, turn left and continue along No. 2 and No. 1 Belts to the No. 3 exhaust shaft." Ex. S-17 at 2. His inspection revealed that the ramp was closed and that an escaping miner would not be able to proceed up the ramp and turn left as instructed. Tr. 263. Inspector Olivier also read the written plan for the secondary escape route, which instructed miners to "proceed to the ladder opposite the stockpile." Ex. S-17 at 2. His inspection revealed the presence of a berm that prevented access to the ladder. Tr. 261. Inspector Olivier did not find fault with escape maps posted by Morton Salt, only the written instructions. Tr. 312.

Lee Franks, mine safety supervisor, accompanied Inspector Olivier during his inspection and agreed that the written evacuation instructions were incorrect. Tr. 116. Franks testified that a berm prevented access to the ladder indicated on the secondary escapeway. Tr. 115. He said that miners "wouldn't normally be on the 1200-foot level" since there was "no running equipment in that area anymore" since the stockpile fell out of use in 2019. Tr. 118-19. Franks admitted the level may be accessed by electricians or mechanics performing maintenance or by supervisors performing roads and grounds inspections. Tr. 118.

Franks testified that the map attached to the evacuation plan was accurate. Tr. 152. He did not expect miners to read the 18-page written plan in an emergency. Tr. 154. Miners receive hands-on mine evacuation training where management physically drives them through the mine and shows the miners the proper escape routes. Tr. 150. Franks called this the "best" way for miners to learn the escape routes because "a lot of people remember things they do more than [what] they read." Tr. 150. Franks identified at least three other ways for miners to exit the 1200-foot level during an emergency and said that miners would "know where to go" during an evacuation. Tr. 154-55.

Eric Gaudreau, mine engineer, also agreed that the "wording was incorrect" on the written escape plan in March 2022. Tr. 427. Gaudreau explained, however, that there were at least three viable escapeways from the mine at the time the citation was issued. The primary route would be to access the No. 4 shaft on the 1200-foot level, which is in fresh intake air. Tr. 429. The secondary route would be to descend to the 1500-foot level to evacuate out of the No. 3 exhaust shaft. Tr. 429. (Both of these options were listed on the post-citation evacuation plan. Tr. 429). A third route would be to ascend to the 1000-foot level and access the No. 4 shaft from there. Tr. 430. Gaudreau testified that few miners accessed the 1200-foot level aside from him, who would perform inspections or pass through the level to access the 1000-foot level. Tr. 437.

Gaudreau testified that he began his position as mine engineer in 2020, and that it would have been the previous mine engineer's job to update the plan after the stockpile was closed in 2019. Tr. 438. He explained that he would only make changes to the plans upon a change in mining operations, and said that he "would not look at" the wording for the 1200-foot level since there was no active production on that level. Tr. 443. Gaudreau testified that he "had not seen" the evacuation plan for the 1200-foot level at the time the citation was written. Tr. 444.

ii. Fact of Violation

Morton Salt does not dispute the fact of violation in its brief. Its witnesses admitted at hearing that the mine escape plan did not give miners accurate "instructions showing how each working area should be evacuated," as required by 30 C.F.R. § 57.11053(c). The Secretary has therefore proven a violation of the cited standard, and Citation No. 9649667 is **AFFIRMED** as modified below.

iii. Gravity and S&S

Inspector Olivier found that the cited conduct was reasonably likely to cause an injury that could be expected to be fatal, and that the violation was S&S. I affirm his finding regarding a fatal injury. An inexperienced miner on the 1200-foot level would be required to rely on the evacuation plan if an emergency occurred. The time wasted following incorrect directions could be the difference between life and death—especially because no correct escape route was laid out in the document.

However, such an injury is not likely. The witnesses agreed that miners rarely accessed the 1200-foot level. Since there was no ongoing work there, the visits to the level would have been infrequent and short. It is therefore unlikely that a miner—let alone an inexperienced miner that lacked sophisticated knowledge of mine exits—would be caught on the 1200-foot level during an emergency.

When determining whether a violation of an emergency standard is S&S, a judge must assume the existence of an emergency. *See Cumberland Coal Res*., LP, 33 FMSHRC 2357, 2367 (Oct. 2011), *aff'd* 717 F.3d 1020 (D.C. Cir. 2013); *Savage Zinc, Inc.*, 17 FMSHRC 279, 290 (Feb. 1995) (in the context of metal/nonmetal mines). But this violation cannot be S&S because, even assuming the emergency, it is unlikely that a hazard would occur. Miners were rarely on this level. Alternate escapeways existed and were known by experienced miners, they

were simply not described adequately on the evacuation plan. Tr. 117, 429. It is unlikely that a novice miner would find himself on the 1200-foot level during an emergency and would have to rely upon the 18-page written escape plan for guidance. Therefore, the Secretary has failed to prove step 2 of the S&S standard.

iv. Negligence

Inspector Olivier found that Morton Salt was highly negligent for its faulty escape plan. I affirm the finding of high negligence. Franks and Gaudreau both admit that the escape plan was not updated after the stockpile on the 1200-foot level was decommissioned in the middle of 2019. Tr. 115, 427. The error in the plan therefore persisted for nearly three years. Gaudreau, the mine engineer, testified that he had not even seen the evacuation plan before Morton Salt was cited for it. Tr. 444. This is a massive and unjustifiable oversight. MSHA mandates that operators inspect their escape routes on a regular basis, *see* 30 C.F.R. § 57.11051, and Morton Salt therefore should have caught its error much earlier than it did. I find that the company was highly negligent for allowing this error to persist for years.

E. Materials Storage (Citation No. 9649679)

Inspector Olivier issued Citation No. 9649679 alleging a violation of 30 C.F.R. § 57.16001, which mandates that "[s]upplies shall not be stacked or stored in a manner which creates tripping or fall-of-material hazards." The citation describes the violation as follows:

> There were several boxes of filters stacked on the overhead bin in the storeroom that were about to fall down. The boxes were approximately 10ft high and had already slid to the edge of the bin where miners travel daily. The boxes were stored here about a week ago. This condition exposes the miners to injuries if the filters were to fall on miners while traveling in the area. Standard 57.16001 was cited 1 time in two years at mine 1600970 (1 to the operator, 0 to a contractor).

Pet. 32. Inspector Olivier alleged that this conduct was reasonably likely to injure a miner and cause lost workdays or restricted duty. He designated the citation as moderate negligence and S&S. Morton Salt terminated the citation on the date of issuance by restacking the filters and eliminating the fall hazard. Pet 32.

i. Factual Background

On March 23, 2023, Inspector Olivier conducted his inspection of the mine's surface supply room, which is a large warehouse-type room typically staffed by an attendant and a supervisor. Tr. 61-62. During the inspection, Inspector Olivier noticed that several metal canister filters were haphazardly stacked atop a supply shelf. Tr. 271-272; Ex. S-24. Inspector Olivier photographed the condition. *See* Ex. S-24. He testified that, subsequently, a Morton Salt representative called the supply room attendant over to re-stack the boxes and that as "soon as [the attendant] put his hand on a box, the box fell right where we had just passed." Tr. 271. Inspector Olivier testified that he saw "several people" come through the supply room during his

inspection. Tr. 272. He said that storeroom attendants would sometimes walk with the miners through the aisles of the storeroom to locate the parts they were seeking. Tr. 272.

Tommy Viator, general foreman of surface maintenance, accompanied Inspector Olivier during his inspection of the supply room. Viator testified that he and Inspector Olivier walked past the stacked metal canister filters without noticing them, and that Inspector Olivier only caught sight of the filters as the two men were talking near the exit of the supply room. Tr. 393. Viator testified that he measured the height of the shelf, 8 feet, and the weight of each filter, 9.5 pounds, after the citation was issued. Tr. 392. On cross examination, Viator admitted that the stacked boxes rose higher than 8 feet since they were stacked on top of each other. Tr. 413. But Viator opined that the filter box would not have fallen if the storeroom attendant had not nudged it. Tr. 393-394. In his 15 years of overseeing the supply room, Viator has had no knowledge of another box falling from a shelf. Tr. 397.

Viator also provided testimony about who may access the storeroom. He said that a total of three people worked in the supply room at any given time. Tr. 394. According to Viator, the supply room requires badge access and that "the only people authorized are the storeroom attendant and managers." Tr. 395. If someone without badge access needs to come in, a storeroom attendant will escort the individual through the supply room. Tr. 395. All employees are required to wear hardhats, steel-toe boots, and safety glasses in the supply room. Tr. 395. Viator also testified to the training provided to miners regarding housekeeping matters and the discipline administered for violations of the company's housekeeping policies. Tr. 397-402.

Beau Landry, surface miner and union representative, also accompanied Inspector Olivier during his supply room inspection. Landry testified that he witnessed the metal canister filters stacked on the top shelf in the supply room as indicated in the photograph taken by the inspector. *See* Ex. S-24. Landry witnessed the storeroom attendant inadvertently knock a box down when rearranging the stacked filters. Tr. 65. He testified that the shelf was roughly 8 feet tall. Tr. 72-73.

Landry testified that the storeroom attendants would sometimes walk with the miners and together find the parts needed on the shelves. Tr. 62. In his experience, miners on Landry's team typically needed to visit the supply room once daily. Tr. 60. According to Landry, the shelf in question abutted a passageway that is typically traveled by miners who enter the supply room. Tr. 73.

ii. Fact of Violation

Morton Salt does not dispute the fact of violation in its brief. The testimony and photographic evidence in this case indicates that the stacked filters caused a fall-of-material hazard. Accordingly, the Secretary has proven a violation of 30 C.F.R. § 57.16001, and Citation No. 9649679 is **AFFIRMED**.

iii. Gravity and S&S

Inspector Olivier found that this violation was reasonably likely to cause an injury that could be expected to cause lost workdays or restricted duty. I affirm the inspector's findings. The photographic evidence clearly demonstrates a fall risk. Ex. S-24. One of the filters did in fact fall when touched by the storeroom attendant. Tr. 271. Further, based on that photograph, it is not hard to imagine three or four of these filters falling. If a nearby miner or equipment accidentally nudged the shelf, the filters could cascade onto the miner and—while each individual filter only weighs 9.5 pounds, Tr. 392—the collective impact could be thirty or forty pounds falling from 8-10 feet. The impact from one or several filters falling even with the use of a hard hat and steel toed boots could cause injury to a miner's shoulders, back, head, arms, or legs. See Tr. 275. It could further cause a trip hazard. Tr. 275. Given that storeroom staff regularly walk down these aisles and other miners sometimes accompany them, I find these risks reasonably likely, and the anticipated injury could certainly cause lost workdays.

I also affirm the inspector's S&S finding. First, I have affirmed a violation of section 57.16001. Second, the violation was reasonably likely to cause a fall of material, the hazard against which the regulation is directed. *See* 30 C.F.R. § 57.16001 ("Supplies shall not be stacked or stored in a manner which creates *tripping or fall-of-material hazards*.") Third, falling metal canister boxes are reasonably likely to cause an injury to miners' shoulders, backs, heads, arms, or legs especially given the location and frequency of miners passing below. And finally, there is a reasonable likelihood that the injury would be serious, given the fact that multiple boxes of filters may fall. The Secretary has therefore satisfied all elements of the *Peabody Midwest* standard and has proven that the violation is S&S. *See* 42 FMSHRC at 38.

iv. Negligence

Further, I find that Morton Salt was moderately negligent for allowing this condition to persist. The hazard was obvious, as shown in the photograph, and it was located at the end of an aisle and visible from at least two directions. It should have been addressed before the inspection. However, the supply room itself was otherwise in good condition, and Inspector Olivier had not encountered issues there previously. Additionally, maintenance supervisor Viator credibly testified as to the training and disciplinary policies on housekeeping, further mitigating the negligence. Moderate negligence is appropriate.

IV. PENALTY

Commission judges assess de novo civil penalties for violations of the Mine Act. *Sellersburg Stone Co.*, 5 FMSHRC 287, 291 (Mar. 1983). The Act requires that judges consider six statutory criteria when assessing a penalty:

> (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. 9649663, the Secretary proposed a regularly assessed penalty of $17,565.00. Pet. 7. Morton Salt has an extensive history of ground control violations, including 52 violations of this standard in the past two years. Morton Salt stipulates that the total proposed penalty of $40,786.00 will not affect its ability to continue in business. Jt. Stip. ¶ 4. This non-S&S violation of section 57.3200 was unlikely to cause fatal injury, but it was avoidable and was caused by Morton Salt's high negligence. Morton Salt did correct the violation in a reasonable amount of time after the citation was issued. Based on these factors, I assess a penalty of $9,500.00.

For Citation No. 9649667, the Secretary proposed a regularly assessed penalty of $7,285.00. Pet. 7. This standard has only been cited once in the previous two years. The penalty will not affect Morton Salt's ability to continue in business. Jt. Stip. ¶ 4. This is another non-S&S violation that was unlikely to cause fatal injury, but again was avoidable and caused by Morton Salt's high negligence. Morton Salt did swiftly correct the violation. Based on all of these factors, I assess a penalty of $2,000.00.

For Citation No. 9649679, the Secretary proposed an assessment of $661.00. Pet. 7. Morton Salt had no other housekeeping violations cited in the two years before this citation. This is an S&S violation that was reasonably likely to cause lost workdays, and it was caused by Morton Salt's moderate negligence. The assessed penalty would not affect the company's ability to stay in business. Jt. Stip. ¶ 4. I therefore assess a penalty of $661.00.

V. PARTIAL SETTLEMENT

The parties have filed a motion to approve partial settlement regarding the seven settled citations. The originally assessed amount for these seven actions was $6,283.00 and the settlement amount is $2,888.00. The settlement includes:

Citation/ Order No.	Originally Proposed Assessment	Settlement Amount	Modifications
9647379	$1,593.00	$1,593.00	Affirm as Issued
9647388	$133.00	$0.00	Vacate
9649660	$1,188.00	$0.00	Vacate
9649668	$133.00	$133.00	Affirm as Issued
9649670	$909.00	$909.00	Affirm as Issued
9649672	$2,194.00	$120.00	Modify gravity from "Reasonably Likely" to "Unlikely," modify negligence from "High" to "Moderate," and modify Significant and Substantial from "Yes" to "No"
9649680	$133.00	$133.00	Affirm as Issued
TOTAL	**$6,283.00**	**$2,888.00**	

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

VI. ORDER

It is hereby **ORDERED** that Citation No. 9649663 is **AFFIRMED**, as modified to reduce the likelihood of injury or illness to "Unlikely" and to remove the S&S designation; that Citation No. 9649667 is **AFFIRMED**, as modified to reduce the likelihood of injury or illness to "Unlikely" and to remove the S&S designation; that Citation No. 9649679 is **AFFIRMED** as issued; and that Orders Nos. 9649653, 9649654, and 9649655 and Citation No. 9647382 are **VACATED**. Respondent is **ORDERED** to pay the Secretary $12,161.00 within 40 days of this order.

The Secretary's motion to approve partial settlement is **GRANTED**. It is further **ORDERED** that the Respondent pay an additional $2,888.00 within 40 days of this order. A grand total of $15,049.00 is due to the Secretary.

David P. Simonton
Administrative Law Judge

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