

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9987 / FAX: 202-434-9949

September 12, 2024

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. VA 2023-0021
Petitioner,	:	A.C. No. 44-04856-570503
	:	
	:	
v.	:	
	:	
	:	
GMS MINE REPAIR & MAINTENANCE,	:	Mine: Buchanan Mine #1
INC.,	:	
Respondent	:	

**SUMMARY DECISION**

Before: Judge Bulluck

This case is before me upon a Petition for Assessment of Civil Penalty filed by the Secretary of Labor (“Secretary”), on behalf of the Mine Safety and Health Administration (“MSHA”), against GMS Mine Repair & Maintenance, Incorporated ("GMS"), an independent contractor performing services at Buchanan Mine #1 (“Buchanan Mine”), pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 ("Mine Act"), 30 U.S.C. § 815(d). The Secretary seeks a civil penalty in the amount of \$9,979.00 for an alleged violation of a safeguard requiring adherence to the block light signals controlling all rail mounted traffic in Buchanan Mine.

The parties initiated this action by filing cross-motions for summary decision on September 29, 2023. The Secretary filed a Motion for Summary Decision (“Secretary’s Motion”); a Memorandum in Support of Summary Decision (“Secretary’s Memorandum”), with attached Exhibits A and B; a Response to GMS’s Motion and Memorandum in Support for Summary Decision (“Secretary’s Response”); and Joint Stipulations of Undisputed Fact, with attached Exhibits A through D.

GMS filed a Motion for Summary Decision (“GMS’s Motion”); a Memorandum of Points and Authorities Supporting Respondent’s Motion for Summary Decision (“GMS’s Memorandum”), with attached Exhibits A through D; and a Response to Petitioner’s Motion for Summary Decision (“GMS’s Response”).

The cross-motions were denied for the reason that the Joint Stipulations formed an insufficient basis upon which the undersigned could resolve the issues at hand, and additional development of the record was deemed necessary. Order Den. Cross-Mot. for Summ. Dec. at 2. Subsequently, the hearing scheduled for March 5, 2024, was cancelled upon the parties refiling of their Joint Stipulations, with attached Joint Exhibits 1 through 8, on February 23,

2024; and filing of their renewed cross-motions for summary decision, along with Supplemental Joint Stipulations, with attached Joint Exhibit 9, on March 4, 2024.

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

Pursuant to Commission Rule 67(b), “[a] motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions and affidavits, shows: (1) that there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.” 29 C.F.R. § 2700.67.

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

Based on a thorough review of the documents filed by the parties, I find that there is no genuine issue as to any material fact. For the reasons set forth below, I conclude that the Secretary is entitled to summary decision as a matter of law, affirm the Citation, and assess a penalty against GMS.

## **II. Factual Background**

GMS is an independent contractor performing services at Buchanan Mine, a large multi-unit underground coal mine. Jt. Stips. 3, 4, 25. The mine contains approximately 80 rail mounted vehicles that regularly travel on its underground haulage track system. Jt. Ex. 3. The rail traffic on this transportation system is controlled by a block light system that coordinates usage of tracks to prevent vehicular collisions. Jt. Stip. 12.

The underlying Safeguard No. 8202825 was issued at Buchanan Mine to the then production-operator, Consolidation Coal Company (“Consol”). Jt. Stips. 10, 11. By 2018, when GMS began performing services in Buchanan Mine, control of the mine had been transferred to the current production-operator, Buchanan Minerals, LLC (“Buchanan”). GMS Mem. at 2. The Safeguard requires that all rail mounted vehicle operators at the mine adhere to the block light

signal procedures controlling traffic on the underground rail transportation system, and notes that previous failures to do so had resulted in head-on collisions and injuries to miners. Jt. Stips. 11, 12; Jt. Ex. 3.

On September 21, 2022, MSHA Inspector John Hughes conducted a regular E01 inspection of Buchanan Mine. Jt. Stip. 17. During his inspection, Hughes was informed by Buchanan's representative that an accident had occurred on August 15, in which a head-on collision of two manbuses was caused by one vehicle operator's failure to change the block lights from green to red before continuing through an intersection. Jt. Stip. 18; Jt. Ex. 1. Consequently, Hughes issued 104(a) Citation No. 8312039 to GMS, alleging a "significant and substantial" violation of 30 C.F.R. § 75.1403, under Safeguard No. 8202825, for an accident that had "occurred," resulting in "lost workdays or restricted duty" injuries, and was due to GMS's "moderate" negligence. Jt. Stips. 19, 21; Jt. Ex. 1. The "Condition or Practice" is described as follows:

The block light system being used at this mine to control the safe movement of rail equipment was not being followed at this mine site on August 15, 2022. The failure to follow the block light system caused an accident where two manbuses, transporting miners and going in opposite directions collided head on along the trackway. The accident resulted in two miners receiving serious injuries and lost time.

Jt. Stip. 20. Hughes terminated the Citation the same day after GMS retrained the contract miner on safe operation of manbuses and use of the block light system. Jt. Ex. 1.

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

#### **A. Joint Stipulations**

1. Buchanan Minerals, LLC is the production-operator of Buchanan Mine #1.
2. At all times relevant to these proceedings, Buchanan Mine #1 is a "mine," as defined in section 3(h) of the Mine Act, 30 U.S.C. § 802(h).
3. On August 15, 2022, Respondent GMS was an independent contractor performing services at Buchanan Mine #1 and was, therefore, an "operator" at that mine, as the term "operator" is defined in section 3(d) of the Mine Act, 30 U.S.C. § 802(d).
4. As an independent contractor, while performing services at the Buchanan Mine #1, GMS is subject to the jurisdiction of the Mine Act.
5. This proceeding is subject to the jurisdiction of the Federal Mine Safety and Health Review Commission and its designated Administrative Law Judges, pursuant to sections 105 and 113 of the Mine Act.
6. Payment of the total proposed penalty of \$9,979.00 in this matter will not affect GMS's ability to continue in business.

7. The individual whose name appears in Block 22 of the citation in contest was acting in an official capacity and as an authorized representative of the Secretary when the citation was issued.
8. Citation No. 8312039 was issued and served by an authorized representative of the Secretary to an agent of GMS at the date, time, and place stated in the citation.
9. Exhibit “A” attached to the Secretary’s Petition in Docket No. VA 2023-0021 contains an authentic copy of Citation No. 8312039, with all modifications or abatements, if any.
10. On February 5, 2013, Consolidation Coal Company was the production-operator of the Buchanan Mine #1.
11. On February 5, 2013, the Mine Safety and Health Administration (“MSHA”) issued Safeguard No. 8202805 to Consolidation Coal Company at the Buchanan Mine #1.
12. Safeguard No. 8202805 “require[s] all rail mounted equipment at this mine site to follow the block light system which has been installed to control the rail traffic and a clear right of way along the track haulage system.”
13. Buchanan Minerals, LLC and GMS entered into a labor services agreement on June 21, 2018, for GMS to provide labor services at the Buchanan Mine #1.
14. The labor services agreement between GMS and Buchanan Minerals contains provisions which contractually obligate GMS to adhere to mandatory safety and health standards.
15. GMS provides site-specific safety training and/or its annual refresher safety training to GMS personnel who perform services at the Buchanan Mine #1 under the mine’s approved training plan, and based upon materials provided by Buchanan Mine #1.
16. The site-specific safety training provided by GMS under Buchanan Mine #1’s approved training plan includes a block light system training, which does not specifically mention any safeguard, but which may include training on conditions or practices covered by any existing safeguard.
17. On September 21, 2022, MSHA conducted a regular quarterly (E01) inspection of the Buchanan Mine #1.
18. During the September 2022 inspection, Buchanan Minerals representative, Rex Penn, described an August 15, 2022, accident to the MSHA inspector conducting the September inspection.
19. On September 21, 2022, MSHA issued Citation No. 8312039, alleging that GMS violated a notice to provide safeguard, Safeguard No. 8202805, which was issued February 5, 2013.

20. The Condition or Practice, as described in Box 8 of Citation No. 8312039, is true and accurate and states: “The block light system being used at this mine to control the safe movement of rail equipment was not being followed at this mine site on August 15, 2022. The failure to follow the block light system caused an accident where two manbuses, transporting miners and going in opposite directions collided head on along the trackway. The accident resulted in two miners receiving serious injuries and lost time.”
21. Citation No. 8312039 was properly evaluated as having occurred, lost workdays or restricted duty, moderate negligence, and significant and substantial.
22. On August 15, 2022, the “miner who failed to follow the block system” who is referenced in Box 17, the Action to Terminate Citation No. 8312039, was a miner employed by GMS.
23. The parties stipulate that, if Safeguard No. 8202805 is both (1) valid and (2) enforceable against GMS, then the circumstances underlying Citation No. 8312039 constitute a violation of Safeguard No. 8202805.
24. Prior to the September 21, 2022, issuance of Citation No. 8312039, neither MSHA nor any authorized representative of the Secretary provided GMS with a written or electronic copy of Safeguard No. 8202805, or advised GMS verbally of Safeguard No. 8202805.
25. In the previous calendar year, GMS worked over 1,000,000 total hours across all mines, and is a large operator.
26. GMS’s history of previous violations reflects 16 total violations at all mines that were paid, finally adjudicated, or became final orders of the Commission in the 15 months preceding the day before the issuance of Citation No. 8312039.
27. The documents included in the Joint Exhibits submitted by the parties are true and authentic copies of the documents they purport to depict.
28. The documents included in the Joint Exhibits submitted by the parties are admissible as evidence.

Jt. Stips. at 1-3.

### **B. Supplemental Joint Stipulations**

1. The “miner who failed to follow the block light system” referenced in Citation No. 8312039, completed site-specific experienced miner training through GMS on October 20, 2021, at which time he began working at Buchanan Mine #1.
2. That site-specific experienced miner training, conducted by GMS with materials provided by Buchanan Mine #1, included a block light system training, but did not specifically reference Safeguard No. 8202805 or any other safeguard.

3. Because annual refresher safety training occurs at Buchanan Mine #1 every October, the “miner who failed to follow the block light system” did not participate in annual refresher safety training before the August 15, 2022, accident.
4. The site-specific experienced miner training was the last time the “miner who failed to follow the block light system” received block light system training before the August 15, 2022, accident.
5. The Supplemental Joint Exhibit submitted by the parties is a true and authentic copy of the document it purports to depict.
6. The Supplemental Joint Exhibit submitted by the parties is admissible as evidence.

Suppl. Jt. Stips. at 1.

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

The Secretary maintains that she is entitled to summary decision because safeguards issued at a mine are binding upon contractors, that Safeguard No. 8202805 is valid and enforceable, and that GMS violated the Safeguard when its employee, operating a vehicle on the track haulage system, failed to change the block lights and collided with another vehicle. Sec’y Mem. at 5, 7-8. Additionally, in her Response, the Secretary contends that collateral estoppel does not apply to this matter because the case upon which GMS relies is distinguishable upon several grounds, and a decision of an administrative law judge is not binding upon other judges. Sec’y Resp. at 1-3; see *GMS Mine Repair & Maint., Inc.*, 42 FMSHRC 135 (Feb. 2020) (ALJ) (“*GMS P*”).

GMS contends that collateral estoppel precludes relitigating the issues already adjudicated in *GMS I*, that Safeguard No. 8202805 is invalid because it fails to fix a time for compliance, and that it is unenforceable against GMS because the independent contractor was never served written notice of the Safeguard by MSHA. GMS Mem. at 1.

##### **A. Collateral Estoppel**

According to GMS, relying upon the outcome in *GMS I*, the collateral estoppel doctrine precludes re-adjudicating the two issues raised in this case: first, the validity of the Safeguard where it does not fix a time for compliance and, second, the enforceability of the Safeguard where MSHA has not served a written copy upon the independent contractor. GMS Mem. at 1. The Secretary, on the other hand, rejects the application of the doctrine because there are significant factual differences between the two cases, and the decision in *GMS I* was based upon multiple grounds, some of which are beyond the inquiry in the instant matter. Sec’y Resp. at 1-2.

Although administrative law judge decisions are not binding precedent, the Commission has recognized that the collateral estoppel doctrine may preclude a party from relitigating issues of fact or law already litigated and determined in a prior suit. *BethEnergy Mines, Inc.*, 14 FMSHRC 17, 26 (Jan. 1992). Collateral estoppel applies where the same issue of fact or law has actually been litigated between the same parties, the determination is a valid and final judgement, and the determination is essential to the judgement in the prior proceeding. *Id.*; *Intell. Ventures I*

*LLC v. Cap. One Fin. Corp.*, 937 F.3d 1359, 1371 (Fed. Cir. 2019); *In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004). A determination is “essential” only when the final outcome hinges upon it. *Bobby v. Bies*, 556 U.S. 825, 835 (2009). However, “where the court in the prior suit has determined two [or more] issues, [any] of which could independently support the result, then neither determination is considered essential to the judgement.” *Intell. Ventures*, 937 F.3d at 1372; citing *In re Microsoft*, 355 F.3d at 328.

Collateral estoppel does not apply in instances where the issues are not identical because there has been a change in controlling facts between the two cases. *BethEnergy*, 14 FMSHRC at 26, citing *Montana v. United States*, 440 U.S. 147, 158-59 (1979). Different controlling facts, in effect, create a new issue in a latter case that was not litigated and adjudicated in the former case. *BethEnergy*, 14 FMSHRC at 26. Collateral estoppel requires “that the precise issues involved in the second action were actually and necessarily decided in the first.” *Frederick G. Bradley*, 4 FMSHRC 982, 990 (June 1982).

While there is some commonality between *GMS I* and this case, in that the independent contractor is the same and was not served written notice of the safeguards by MSHA in either circumstance, the alleged violations occurred in different mines, and challenges to the facial validity of the respective safeguards are necessarily different because the safety concerns involved different aspects of the underground transportation systems. Moreover, while the two cases present a common question as to whether a safeguard is enforceable against an independent contractor that has not been provided written notice by MSHA, *GMS I* was not a valid and final judgement of the Commission and, therefore, is not binding precedent in this proceeding.

Furthermore, *assuming arguendo*, that issues in the two cases were identical, collateral estoppel would not apply because neither the determination as to the validity nor the determination as to the enforceability of the safeguard was essential to the former decision, and the outcome in *GMS I* was based upon several alternative grounds in addition to validity and enforceability.<sup>1</sup> Therefore, there is no preclusive effect on the issues in the present case.

## **B. Validity of the Safeguard**

*GMS* challenges the facial validity of Safeguard No. 8202805 because it lacks a declarative statement fixing a time for compliance. *GMS Mem.* at 7. The Secretary, while not disputing that a safeguard must necessarily specify when it becomes effective, contends that the “Termination Due Date” and “Time” on the Safeguard set the time it goes into effect. *Sec’y Mem.* at 7.

Section 75.1403-1(b) provides that “the authorized representative of the Secretary shall in writing advise the operator of a specific safeguard which is required pursuant to § 75.1403 and shall fix a time in which the operator shall provide and thereafter maintain such safeguard. If the safeguard is not provided within the time fixed and if it is not maintained thereafter, a notice shall be issued to the operator pursuant to section 104 of the Act.” 30 C.F.R. §75.1403-1(b).

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<sup>1</sup> In *GMS I*, the safeguard notice was also found to be facially invalid because it failed to identify the targeted hazard and specific remedy, and it was determined to be inapplicable to the conditions for which MSHA had cited the independent contractor. See *GMS I*, 42 FMSHRC at 143-45.

The “Condition or Practice” on Safeguard No. 8202805, issued February 5, 2013, at 9:05 am, is as follows:

The block light system is not being followed at this mine site. The track mounted manbuses are proceeding along the track haulage way without assurance that the manbus has the right of way or a clear road. During today’s inspection upon leaving the manbus station and traveling the 3 East Main track line the outgoing manbus with one management person and one MSHA coal mine inspector onboard was met by [an] incoming manbus. The outgoing manbus had the right of way by turning the block light red at 8 Right but had no way of knowing that the incoming manbus was approaching in the same block. This is a large multi-unit mine with approximately 80 rail vehicles that regularly and frequently travel this set of tracks, which includes six mechanized mining units and a long wall. The rail traffic at this mine site is controlled by the block light system. Previous failures to follow the system have result[ed] in head on collisions and injured miners. This is a notice to provide a safeguard requiring all rail mounted equipment at this mine site to follow the block light system which has been installed to control the rail traffic and a clear right of way along the track haulage system. The safeguard is also placing the operator on notice that failure to follow the block light system will result in more stringent enforcement acts by MSHA. This condition or practice has recently been cited on more than one occasion under existing Safeguard No. 7331400.

Standard 75.1403 was cited 41 times in two years at mine 4404856 (41 to the operator, 0 to a contractor).

Jt. Ex. 3. The Safeguard provides a Termination Due Date and Time of February 5, 2013, at 9:30 am. The Safeguard was actually terminated earlier at 9:10 am, after “the operator of the manbus encountered during today’s inspection was instructed by the Assistant Mine Foreman on the block light system.” Jt. Ex. 3.

At the time that Safeguard No. 8202805 was issued, Buchanan Mine’s underground rail transportation system had already been operating under the block light traffic control system with Safeguard No. 7331400 in effect, and previous failures to adhere to the block light signal procedures had caused head-on collisions and miner injuries. Safeguard No. 8202805 reinforced the safety requirement in previously issued Safeguard No. 7331400, and placed the operator on notice that future violations of the mine’s block light traffic protocol would result in “more stringent enforcement” actions by MSHA. It is wholly apparent, under the particular circumstances in this case, that the designated “Termination Due Date” and “Time” on Safeguard No. 8202805, February 5, 2013, at 9:30 am, gave Consol 25 minutes in which to achieve compliance before MSHA’s enhanced enforcement of future violations was put in place. Any other reading of the Safeguard cuts against the reason for issuing it in the first place, reinforcement of MSHA’s efforts to eliminate vehicle operators being “asleep at the switch.” Accordingly, I find that the enhanced enforcement scheme of Safeguard No. 8202805 went into effect at 9:30 am. The Safeguard, therefore, is valid.



### C. Enforceability of the Safeguard

GMS, also relying on the finding in *GMS I*, challenges the Secretary's authority to enforce Safeguard No. 8202805 against GMS by arguing that, under section 75.1403-1(b), a safeguard is not binding upon an independent contractor performing services in a mine unless MSHA has served it written notice of the safeguard. *GMS Mem.* at 5-6; see *GMS I*, 42 FMSHRC 135. The Secretary takes the contrary position that once a safeguard notice has been served upon a production-operator at a mine, it is binding upon all independent contractors operating at that mine. *Sec'y Mem.* at 5-6, 11. Furthermore, the Secretary argues, providing a safeguard notice to a production-operator effectively provides notice to independent contractors, as the operator is required to train miners on safety regulations and procedures, and requiring MSHA to issue written safeguards to every independent contractor operating in a mine is wholly untenable. *Sec'y Mem.* at 11-13.

Although MSHA never served a written copy of the Safeguard upon GMS, Buchanan advised GMS of the mine's approved training plan and made training materials available, which GMS used to provide site-specific and annual refresher training to GMS personnel who were working in the mine, including block light traffic control procedures. *Jt. Stips.* 15, 16, 24. Moreover, GMS was contractually obligated by its labor services agreement with Buchanan to adhere to mandatory safety and health standards applicable to the mine's operations. *Jt. Stips.* 13, 14.

Production-operators of mines are vested with authority over control of operations, including staffing and training, and written notice by MSHA to operators, under section 75.1403-1(b), imposes upon them the responsibilities to ensure that all working miners are adequately informed of, trained on, and compliant with mine-specific safeguards, as well as mandatory safety standards. Additionally, production-operators are in the best position to know the composition of their workforce, whereas MSHA is only made aware of contractor services by production-operators' quarterly reporting. *GMS Resp.* at 5; see 30 C.F.R. §§ 50.30, 50.30-1. Furthermore, regulations addressing both new miner and annual refresher training, identically worded in pertinent part, require that they include instruction on "the procedures for riding on and in mine conveyances; the controls in effect for the transportation of miners and materials; and the use of the mine communication systems, warning signals, and directional signs." See 30 C.F.R. §§ 48.5(b)(3), 48.8(b)(2). In order to ensure compliance, it would be highly impractical to require MSHA to timely serve written notice of safeguards upon every independent contractor brought into the mines, on an as-needed basis, especially because contractors are not in charge of the mines, they are supplemental to the permanent workforce, and they are transient. Consequently, the only reasonable reading of the notice component of section 75.1403-1(b) is its plain language - - that MSHA advise the mine operator in writing of a safeguard. In this way, MSHA recognizes production-operators' autonomy in controlling operations in their mines, in accordance with law and regulation, and places solely upon them the burden of achieving compliance.

In this matter, Buchanan satisfied its responsibility, upon bringing GMS contract workers into its mine, to ensure that all working miners adhered to the safety requirements of the Safeguard. In finding proper written notice of Safeguard No. 8202805 to Buchanan by MSHA, and adequate training of its contract employees on the Safeguard's safety requirements by GMS,

I find that GMS had constructive notice of Safeguard No. 8202805 from Buchanan, and that it is enforceable against GMS.

#### **D. Violation of the Safeguard**

The parties have stipulated that if Safeguard No. 8202805 is valid and enforceable against GMS, the circumstances underlying Citation No. 8312039 constitute a violation of the Safeguard. Jt. Stip. 23. The parties have also stipulated to the occurrence of a significant and substantial violation that resulted in lost-workday or restricted-duty injuries, and was caused by GMS's moderate negligence. Jt. Stip. 21. Having determined that Safeguard No. 8202805 is both valid and enforceable against GMS, I conclude that GMS violated the Safeguard, and sustain the Secretary's gravity and negligence designations.

#### **V. Penalty**

While the Secretary has proposed a regularly assessed civil penalty of \$9,979.00, the Judge must independently determine the appropriate assessment by proper consideration of the six penalty criteria set forth in section 110(i) of the Mine Act, 30 U.S.C. § 820(i). See *Sellersburg Stone Co.*, 5 FMSHRC 287, 291-92 (Mar. 1983), *aff'd* 736 F.2d 1147 (7th Cir. 1984).

Applying the penalty criteria, I find that GMS is a large operator, with no prior violations of section 75.1403 in the 15 months prior to this violation, and that it had an overall violation history that is a mitigating factor in assessing an appropriate penalty. Jt. Stips. 25, 26; Jt. Ex. 8. I also find that the proposed penalty will not affect GMS's ability to continue in business, and that GMS demonstrated good faith in achieving rapid compliance after notice of the violation. Jt. Stip. 6; Jt. Ex. 1. The remaining criteria involve consideration of the gravity and negligence of the violation. I have found that the violation was significant and substantial, that it resulted in an accident that caused lost-workday or restricted-duty injuries, and that GMS's negligence was moderate. Accordingly, I find that a penalty of \$9,979.00, as proposed by the Secretary, is appropriate.

#### **VI. Order**

**ACCORDINGLY**, the Secretary's Renewed Motion for Summary Decision is **GRANTED**, Respondent's Renewed Motion for Summary Decision is **DENIED**, and it is **ORDERED** that GMS Mine Repair & Maintenance, Incorporated **PAY** a civil penalty of \$9,979.00 within 30 days of the date of this Decision.<sup>2</sup>



Jacqueline R. Bulluck  
Administrative Law Judge

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<sup>2</sup> Payment should be made electronically at Pay.Gov, a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508>. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration, P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers.

Distribution:

Ryan M. Kooi, Office of the Solicitor, U.S. Department of Labor, 201 12th Street South, Suite 401, Arlington, VA 22202-5450  
[Kooi.ryan.m@dol.gov](mailto:Kooi.ryan.m@dol.gov)

Carl W. Shaffer, Hissam Foreman Donovan Ritchie PLLC, P.O. Box 3983, Charleston, WV 25339  
[cshaffer@hfdrlaw.com](mailto:cshaffer@hfdrlaw.com)

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