FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, N.W., Suite 520N
Washington, D.C. 20004

September 30, 2025

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner,	:	CIVIL PENALTY PROCEEDING Docket No. WEVA 2024-0205 A.C. No. 46-01318-594156
v.	:	
HARRISON COUNTY COAL RESOURCES, INC., Respondent.	:	Mine: Harrison County Mine

DECISION

Appearances: David J. Casserly, Esq., U.S. Department of Labor, Office of the Solicitor, Arlington, VA, for Petitioner; Christopher D. Pence, Esq., Pence Law Firm PLLC, Charleston, WV for Respondent.

Before: Judge Paez

This case comes before me upon the Petition for the Assessment of Civil Penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(d) ("Mine Act"). In dispute are three citations issued under section 104(a) of the Mine Act to Harrison County Coal Resources, Inc. ("HCCR"), as owner and operator of the Harrison County Mine in Wallace, West Virginia.

To prevail, the Secretary must prove a cited violation "by a preponderance of the credible evidence." *In re: Contests of Respirable Dust Sample Alteration Citations*, 17 FMSHRC 1819, 1838 (Nov. 1995) (citing *Garden Creek Pocahontas Co.*, 11 FMSHRC 2148, 2152 (Nov. 1989)), *aff'd sub nom.*, *Sec'y of Labor v. Keystone Coal Mining Corp.*, 151 F.3d 1096, 1106–07 (D.C. Cir. 1998). This burden of proof requires the Secretary to demonstrate "the existence of a fact is more probable than its nonexistence." *RAG Cumberland Res. Corp.*, 22 FMSHRC 1066, 1070 (Sept. 2000) (citations and internal quotations omitted), *aff'd*, 272 F.3d 590 (D.C. Cir. 2001).

I. STATEMENT OF THE CASE

The Secretary issued HCCR seven citations under section 104(a) of the Mine Act for alleged violations of health and safety standards. The parties settled four of the seven citations per my Decision Approving Partial Settlement issued January 7, 2025. Three section 104(a) citations remain at issue: (1) Citation No. 9587773, which alleges a violation of 30 C.F.R. § 75.1722(a) for failing to maintain the CN41 shuttle car's guard with a proposed penalty of

$172.00; (2) Citation No. 9587893, which alleges a violation of 30 C.F.R. § 75.202(b) for allowing a person to work or travel under an unsupported roof with a proposed penalty of $357.00; and (3) Citation No. 9587919, which alleges a violation of 30 C.F.R. § 75.333(h) for failing to maintain a permanent ventilation control with a proposed penalty of $305.00.

I held a hearing on January 15, 2025, in Morgantown, West Virginia. The Secretary presented testimony from two witnesses—MSHA Inspector Douglas William Moyer and MSHA Inspector Richard W. Miller. HCCR presented testimony from six witnesses—HCCR Safety Inspector Jonah Stackpole; Section Foreman Allan Stewart; Mine Supervisor James Alexander Pancost; Maintenance Foreman Mark Burns; HCCR Safety Inspector Eric Scott Sublett; and Mine Engineer Kevin Burton. The parties each filed post-hearing briefs and reply briefs.[1]

II. ISSUES

The Secretary argues that I should affirm the three citations as issued along with their proposed penalties. (Sec'y Br. at 1; Sec'y Reply at 1.) HCCR contested the penalties and argues that all three citations should be vacated. (Resp't Br. at 1; Resp't Reply at 1.)

Accordingly, I determine that the following issues are before me: (1) whether HCCR failed to adequately guard moving parts in the cable reel compartment of the CN41 shuttle car in violation of 30 C.F.R. § 75.1722(a) as alleged in Citation No. 9587773; (2) whether a person worked or traveled under unsupported roof in violation of 30 C.F.R. § 75.202(b) as alleged in Citation No. 9587893; (3) whether HCCR failed to maintain a permanent ventilation control in violation of 30 C.F.R. § 75.333(h) as alleged in Citation No. 9587919; (4) whether the Secretary properly designated the gravity determinations for these alleged violations; (5) whether the Secretary properly designated the negligence determinations for these alleged violations; and (6) whether the Secretary's proposed penalties for these alleged violations are appropriate.

For the reasons set forth below, Citation Nos. 9587773 and 9587893 are **AFFIRMED**, and Citation No. 9587919 is **MODIFIED**.

III. PARTIES' STIPULATIONS

At the hearing the parties stipulated in a joint exhibit to the following items verbatim:

1. The Respondent was an "operator" as defined in § 3(d) of the Federal Mine Safety and Health Act of 1977, as amended (hereinafter "the Mine Act"), 30 U.S.C. § 802(d), at the mine at which the citations at issue in this proceeding were issued.
2. At all times relevant to these proceedings, Harrison County Mine, (ID 46-01318) is a "mine" as defined in § 3(h) of the Mine Act, 30 U.S.C. § 802(h).

[1] The hearing transcript, the Secretary's exhibits, HCCR's exhibits, the Secretary's Post-Hearing Brief, HCCR's Post-Hearing Brief, the Secretary's Reply Brief, and HCCR's Reply Brief are abbreviated, respectively, as: "Tr.," "Ex. S–#," "Ex. R–#," "Sec'y Br.," "Resp't Br.," "Sec'y Reply," and "Resp't Reply." The parties' joint stipulations are noted as "Ex. Jt.–1."

3. Operations of the Respondent at the Harrison County Mine at which the citations were issued are subject to the jurisdiction of the Mine Act.
4. 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.
5. Harrison County Mine is operated by the Respondent.
6. Payment of the total proposed penalty in this matter will not affect the Respondent's ability to continue in business.
7. MSHA Inspectors Douglas William Moyer and Richard W. Miller were acting in an official capacity and as authorized representatives of the Secretary of Labor when the citations were issued.
8. True copies of each of the citations that are at issue in this proceeding were served by a duly authorized representative of the Secretary of Labor upon an agent of Respondent at the date, time, and place stated in the citations, as required by the Act.
9. Exhibit "A" attached to the Secretary's Petition in Docket No. WEVA 2024-0205 contains authentic copies of the citations at issue in this matter with all modifications or abatements, if any.

(Ex. Jt.–1; Tr. 7:24–8:19.)

IV. FINDINGS OF FACT, ANALYSIS, PRINCIPLES OF LAW, AND CONCLUSIONS OF LAW – CITATION NO. 9587773

A. Facts Relevant to Citation No. 9587773 – Inadequate Mechanical Guarding on the CN41 Shuttle Car

HCCR utilizes electric powered shuttle cars to bring coal from the working face—where active coal mining occurs—to a conveyor belt that carries the raw coal out of the mine. (Tr. 31:23–32:3.) Each shuttle car receives power from a trailing cable that winds and unwinds via a chain-driven cable reel located in the cable reel compartment of the shuttle car. (Tr. 32:23–33:23.) The cable reel automatically winds up the cable as the car moves towards the conveyor belt and releases the cable as the car moves towards the working face. (Tr. 32:23–33:23.)

The cable reel includes two moving parts—(1) the spool or reel, and (2) the chain that drives the spool. (Tr. 50:2–51:9.) The spool—a large, metal double wheel about 3-feet-wide with a radius of 14 to 16 inches—sticks out slightly above the frame of the cable reel compartment. (Tr. 39:13–40:6, 40:22–41:12, 42:24–43:3; Ex. S–5.) The chain sits below the spool and several inches away from the edge of the shuttle car. (Tr. 46:6–47:19; Ex. S–5.) A typical shuttle car has a metal lid over the cable reel compartment that sits above the spool, and the lid rests on brackets such that it avoids contact with any moving parts inside the cable reel compartment. (Tr. 40:22–41:12, 81:1–25; Ex. S–5.)

On October 5, 2023, MSHA Inspector Douglas William Moyer traveled to the Harrison County Mine as part of a standard quarterly inspection to examine the equipment in the 7 North Mains section of the mine. (Tr. 28:7–29:12; Ex. S–2.) HCCR Safety Inspector Eric Scott

Sublett accompanied Moyer on his inspection. (Tr. 29:13–22, 242:24–243:4.) Moyer examined two of HCCR's shuttle cars, including the CN41 shuttle car. (Ex. S–2; Tr. 29:23–30:2.)

MSHA Inspector Moyer noticed the CN41 shuttle car lacked the typical metal lid and, instead, had a piece of rubber belting jerry-rigged to serve as a lid to cover the cable reel spool and chain pulley. (Ex. S–2; Tr. 40:9–44:2.) Moyer observed that, unlike the typical metal lid, the rubber belting cover did not fully shield the cable reel compartment, as two or three 3-inch-wide by 5- or 6-inch-long openings existed between the edge of the rubber belting cover and the shuttle car's frame. (Tr. 45:7–18, 46:3–18, 48:2–49:22, 52:20–54:18, 257:9–260:4, 263:25–264:13; Ex. S–2.) Additionally, Moyer noticed a 5-inch-long hole cut into the rubber belting cover, exposing the top inch or two of one of the metal wheels of the cable-reel spool which was poking through the rubber belting cover. (Tr. 41:2–12, 42:9–44:20, 45:18–23, 48:24–49:1, 51:11–52:19, 76:13–78:11, 238:5–17, 260:5–13; Ex. S–2.) HCCR cut this hole in the rubber belting cover because the rubber belting sat directly on the cable-reel spool, instead of resting on brackets above it, causing the spool to wear through the rubber belting. (Tr. 42:9–44:20, 51:11–18, 81:1–25, 238:5–17, 260:5–13; Ex. S–2.)

Based on these observations, MSHA Inspector Moyer issued Citation No. 9587773 to HCCR on October 5, 2023, citing the CN41 shuttle car for "not being maintained in a safe operating condition" as required by section 75.1725(a), because "[t]he metal lid covering the cable reel and chain pulley is missing and a section of rubber belting has been installed to replace the lid." (Ex. S–2; Tr. 171:5–10.) He explained that "the [rubber] belting . . . is not sufficient to cover the outer section of cable reel," that "the chain pulley [] is exposed along the top and top side for a total of 3 inches each[, and that t]he cable reel has worn into the belting for approximately [5] inches." (Ex. S–2.) However, some three months later, on January 16, 2024, Inspector Moyer modified Citation No. 9587773 to indicate a violation of section 75.1722(a)—a guarding violation—rather than section 75.1725(a), "because the belting did not adequately cover the rotating cable reel and the moving chain pulley to prevent a miner from becoming entangled in it." (Ex. S–2.) Moyer designated the violation as "unlikely" to result in a "permanently disabling" injury to one person and determined that HCCR exhibited a "low" level of negligence, which he reiterated in his modification of Citation No. 9587773. (Ex. S–2.)

B. Analysis and Conclusions of Law: Citation No. 9587773 – CN41 Shuttle Car

1. Violation of 30 C.F.R § 75.1722(a) – Inadequate Mechanical Guarding on the CN41 Shuttle Car

The Secretary argues that HCCR violated section 75.1722(a), a mandatory safety standard requiring "[g]ears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings, shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded." (Sec'y Br. at 11); 30 C.F.R § 75.1722(a). Specifically, the Secretary alleges that HCCR violated the safety standard by installing a rubber belting cover on the CN41 shuttle car's cable reel that insufficiently guarded the moving parts from miners and may have caused injury. (Sec'y Br. at 11.) In response, HCCR makes several arguments that I address below.

a. Whether the CN41 shuttle car falls within the scope of 30 C.F.R § 75.1722(a)

Initially, HCCR takes a different tack and argues that Citation No. 9587773 should be vacated because the CN41 shuttle car is electrically powered "face equipment" and, therefore, not within the scope of section 75.1722(a). (Resp't Br. at 21; Resp't Reply at 5.) In support, HCCR points to *Island Creek Coal Co.*, 22 FMSHRC 823, 827–28 (July 2000), where the Commission held the Secretary incorrectly applied a "locked and tagged out" electrical safety standard to mechanical, "non-electrical work." (Resp't Br. at 21.) HCCR argues that the Secretary is incorrectly applying a mechanical safety standard to the CN41 shuttle car, a piece of electrical equipment. (Resp't Br. at 21.)

HCCR's argument fails for two reasons. First, *Island Creek Coal* is easily distinguishable from this case because it does not address section 75.1722(a) or shuttle cars. *Island Creek Coal Co.*, 22 FMSHRC at 825–27. Second, although the CN41 shuttle car runs on electric power from a trailing cable, it moves by using tension generated through a mechanical, chain-driven cable reel. (Tr. 32:17–34:10.) In addressing the applicability of section 75.1722(a), the Commission has held that the standard "applies to the specific machine parts listed plus other exposed moving machine parts similar to those listed." *Mathies Coal Co.*, 5 FMSHRC 300, 302 (Mar. 1983). Indeed, section 75.1722(a) states that "chains" and other "similar exposed moving machine parts which may be contacted by persons" need to be guarded. 30 C.F.R. § 75.1722(a). As MSHA Inspector Moyer explained, the shuttle car is electrically powered via a trailing cable that winds and unwinds around a large spool from *a chain-driven cable reel* in a compartment on the shuttle car. (Tr. 32:23–33:23.) The evidence of record thus establishes that the CN41 shuttle car contains moving mechanical parts specifically listed in section 75.1722(a). Accordingly, I determine that the CN41 shuttle car comes within the scope of section 75.1722(a), because it contains a mechanical chain that pulls a moving reel that spools and unspools the trailing cable while it shuttles coal between the working face and the conveyor belt.

b. Whether the moving machine parts of the CN41 shuttle car "may be contacted by persons" per 30 C.F.R § 75.1722(a)

Next, HCCR looks to the language of section 75.1722(a) to attack the citation. (Resp't Br. at 18, 21–22.) HCCR does not dispute MSHA Inspector Moyer's observation that the rubber belting cover on the CN41 shuttle car did not fully cover the cable reel compartment. (Resp't Br. at 17.) Rather, HCCR argues that Citation No. 9587773 should be vacated because under normal mining conditions no reasonable possibility exists that the mechanical moving parts of the cable reel would be "contacted by persons" for purposes of section 75.1722(a); therefore, the rubber belting cover sufficiently guarded against injury. (Resp't Br. at 21–22; Resp't Reply at 6.)

In response, the Secretary reiterates that the rubber belting used to cover the CN41 shuttle car's cable reel compartment insufficiently guarded the moving parts from miners, which could lead to injury. (Sec'y Br. at 11; Sec'y Reply at 8.) The Secretary asserts that MSHA Inspector Moyer established two possible instances—reeling in the cable after a maintenance inspection and shuttling coal between the working face and the conveyor belt—where a miner could contact the CN41 shuttle car's moving parts and thereby be exposed to injury. (Sec'y Br. at 10–13.)

i. Chain for cable reel and exposed spool of the CN41 shuttle car entangling a miner during maintenance

The Secretary focuses on a "whipping" hazard in which a miner contacting the cable reel could become entangled as the cable reels back into the shuttle car. (Sec'y Br. at 4, 11–12; Sec'y Reply at 7.) At the hearing, MSHA Inspector Moyer described the "whipping" hazard that arises when a shuttle car is stationary for maintenance. (Tr. 54:21–55:25.) Moyer explained that after pulling off the cable to inspect it, any miner near the jerry-rigged rubber belting cover could slip or fall, place a hand or arm through the gaps in the rubber belting cover, and become entangled in the chain or other moving parts when the equipment is activated and the chain reels the cable back on to the spool. (Tr. 54:21–55:25.) The Secretary argues that a shuttle car's cover is closed during cable reeling, as the photograph in Exhibit S–5 shows no latch or prop to hold the cover up, and asserts that Inspector Moyer testified that operators do not leave the cover open during cable reeling. (Sec'y Br. at 11–12; Ex. S–5.)

During equipment maintenance of shuttle cars like the CN41, a foreman inspecting the shuttle car's electric trailing cable must first engage the diversion valve to manually pull the cable off the spool. (Tr. 34:11–20, 37:2–38:1, 40:9–25, 54:21–55:25, 60:5–61:9, 233:19–235:14.) While the foreman pulls the cable off the spool, the shuttle car's lid is down. (Tr. 40:16–21.) After the foreman fully pulls out and inspects the cable, he energizes the shuttle car so the chain can reel the cable back onto the spool, akin to a measuring tape snapping up as it reels in. (Tr. 38:12–39:2, 60:11–61:9, 233:19–235:14.) To accomplish this, the foreman lifts the lid to disengage the diversion valve and energizes the shuttle car. (Tr. 37:2–38:1, 40:9–25, 54:21–55:25, 60:5–61:9, 233:19–235:14.)

Although MSHA Inspector Moyer stated that the lid for the cable reel compartment is down when the cable is pulled out for maintenance, his testimony is unclear as to whether the lid is closed when the cable is reeled in. (Tr. 40:16–21.) In contrast, Maintenance Foreman Mark Burns clearly stated, as confirmed by counsel for the Secretary on cross-examination, that the shuttle car's lid is open when the cable is being reeled in so the foreman can confirm that the cable is properly spooled and is functioning. (Tr. 233:19–235:149, 236:24–237:16.) Indeed, for the shuttle car's lid to function as a mechanical equipment guard, it must be closed; however, I note section 75.1722(c) permits the removal of mechanical guarding to examine for physical defects and functionality. 30 C.F.R § 75.1722(3); *see Arch of Kentucky Inc.*, 13 FMSHRC 753, 757–58 (Nov. 1989). Given the insufficiency of Inspector Moyer's testimony on this point, I determine that the Secretary fails to establish how a typical metal lid—as opposed to the insufficient rubber belting cover—on the CN41 shuttle car would guard against the potential hazard of a miner becoming entangled in the moving parts of the CN41 cable reel compartment while reeling in the trailing cable during maintenance.

ii. Chain for the cable reel and exposed spool of the CN41 shuttle car entangling a miner while running coal

MSHA Inspector Moyer determined that gaps in the rubber belting covering the moving CN41 shuttle car's cable reel compartment exposed miners to the risk of a hand or arm getting caught in the chain for the cable reel or exposed spool. (Tr. 57:19–60:15; Ex. S–2.) Moyer

explained that miners often walk behind and near shuttle cars, carrying tubes and other items while shuttle cars transport coal from the working face to the conveyor belt. (Tr. 57:19–60:15.) Specifically, Moyer testified that due to the unevenness of the mine floor, a miner walking near the moving CN41 shuttle car could slip and fall, potentially thrusting their arm through the gaps in the rubber belting cover due to the pliability of the rubber belting. (Tr. 55:5–25, 57:19–60:15.) Thus, a miner's hand or arm could potentially get caught in the chain for the cable reel or exposed spool, leading to entanglement and injury. (Tr. 57:19–60:15; Ex. S–2.)

HCCR—in support of its contention that no reasonable possibility exists that the mechanical moving parts of the cable reel compartment would be "contacted by persons" under section 75.1722(a)—highlights the relatively small size of the gap between the rubber belting cover and the shuttle car frame while noting that the gap is at "shoulder height." (Resp't Br. at 20–22.) Indeed, HCCR Safety Inspector Sublett who is six-feet tall said the gap was "really close to shoulder height on [him]," as described and discussed in relation to Exhibit S–5. (Tr. 264:14–22, 265:23–267:11.) However, both MSHA Inspector Moyer and Sublett testified that the photos in Exhibit S–5 are not representative of the CN41 shuttle car or even of all the other shuttle cars at the Harrison County Mine. (Tr. 31:12–18, 40:9–41:25, 79:17–22, 256:15–257:5; Ex. S–5.) Thus, it is unclear whether Sublett was testifying about the height of the CN41 shuttle car. Further, when speaking of the photos in Exhibit S–5, Sublett noted the variations of the terrain, and he specifically noted the uphill incline of the mine floor that elevated the miner in the first photo in Exhibit S–5 such that the shuttle car was around his chest or waist height. (Tr. 264:20–265:1, 265:23–267:2.)

MSHA Inspector Moyer made similar statements regarding the mine floor when he said, "a lot of times in a mine surface, in a floor . . . there are parts of areas along ribs and stuff that get elevated, where a person's arm and stuff would be above . . . [the cable reel compartment]." (Tr. 55:5–17.) Moyer admitted on cross-examination that he did not know the height of the CN41 cable reel compartment's frame; but when pressed Moyer said, "I can speculate" and "I know the frame . . . is not even above your waist." (Tr. 85:2–86:23.) Moyer's statement on the waist height of the frame indicates that miners could come into contact with the moving parts inside the CN41 shuttle car's cable reel compartment, given its relatively low height in combination with the "two or three large[,] [3-inch] openings" that were "[5-] or [6]-inches long" between the rubber belting cover and the frame. (Tr. 45:7–18, 46:3–18, 48:2– 49:22, 52:20–54:18; Exs. S–2, S–5.) Even if the frame of the CN41 shuttle car was chest high or "really close to shoulder height" as stated by Sublett, Sublett also noted that the varied terrain of the mine floor could allow a miner to be at waist height against the frame, as he explained to the Court regarding the photos in Exhibit S–5. (Tr. 263:14–19, 265:23–267:2.) Sublett's testimony coupled with Inspector Moyer's observation that the CN41 shuttle car frame was at waist height, demonstrates that, depending on where the CN41 shuttle car was located while moving, a miner who tripped or fell could be sufficiently above the cable reel compartment to have their hand or arm go through the gaps between the rubber belting cover and the frame and become entangled with the CN41's moving parts. Therefore, a possibility exists, no matter how unlikely, of a miner contacting the moving parts of the CN41 shuttle car.

Finally, the MSHA Program Policy Manual in discussing section 75.1722(a) states that mechanical equipment guards must "[b]e of such construction that openings in the guard are too

small to admit a person's hand" and "[b]e of sufficient size to enclose the moving parts and exclude the possibility of any part of a person's body from contacting the moving parts while such equipment is in motion." V MSHA, U.S. Dep't of Labor, *Program Policy Manual*, Subpart R, at 155–56 (2015). The 3-inch gaps of 5- to 6-inches in length observed by MSHA Inspector Moyer are large enough for a miner's hand to slip through them and become entangled in the chain-driven cable reel and spool of the CN41 shuttle car. However, Moyer recognized the low degree of this possibility and reasoned that "[e]ven though it's minimal exposure and it was unlikely, there's still exposure there to a moving part or piece of equipment." (Tr. 54:21–55:4, 74:9–75:21.) Therefore, Moyer cited the likelihood of injury or illness for Citation No. 9587773 as "unlikely." (Tr. 75:7–19; Ex. S–2.) In considering Moyer's nineteen years of combined experience as a coal miner and MSHA inspector, I credit his reasonable explanation of the potential hazards to miners of contacting the moving parts in the CN41 shuttle car's cable reel compartment while it is running coal.

Based on the discussion above, I determine that the gaps along the make-shift rubber belting cover on the CN41 shuttle car's cable reel compartment created a possibility that a miner who trips or falls could have their hand or arm slip through the gaps and contact the chain of the cable reel or exposed spool. Therefore, I determine that the rubber belting cover on the CN41 shuttle car's cable reel compartment did not guard against injury, as a miner could come in contact with the moving machine parts within the cable reel compartment.

Accordingly, I conclude that HCCR violated section 75.1722(a).

2. Gravity Designations for Citation No. 9587773

HCCR does not dispute the Secretary's gravity determinations for Citation No. 9587773. (Resp't Br. at 21–22; Resp't Reply at 5–6; Ex. S–2.) MSHA Inspector Moyer determined that one miner could be affected by the violation, and they could suffer entanglement, lacerations, or amputations as a result of the violation, which could lead to "permanently disabling" injuries. (Ex. S–2; Tr. 54:21–55:4, 57:19–60:9, 60:5–15, 62:13–63:2, 82:20–83:24.) Based on Moyer's testimony, I conclude that the injuries most likely to result from an incident involving the violative conditions would be "permanently disabling" and affect one person. Additionally, as discussed above, I conclude that Moyer properly determined that an accident occurring as a result of the violative conditions was "unlikely." *See* discussion *supra* Part IV.B.1.b.ii.

3. Negligence Designation for Citation No. 9587773

MSHA Inspector Moyer designated HCCR's negligence as "low," which HCCR does not dispute. (Resp't Br. at 21–22; Resp't Reply at 5–6; Ex. S–2.) Moyer stated that HCCR was not mining at the time of the violation and estimated that the rubber belting cover could only have been in place for a few days due to the wear on the rubber from the cable reel. (Tr. 63:3–21; Ex. S–2.) Additionally, Moyer stated that HCCR preemptively identified the belting as requiring replacement in a safety audit the day prior to the citation and intended to replace the rubber belting cover. (Tr. 63:3–21, 260:14–261:1; Ex. S–2.) Thus, if ordinary mining operations had continued, the cover likely would have been replaced within a few days. (Tr. 63:3–21, 260:14–261:1.)

The Commission evaluates the degree of negligence using "a traditional negligence analysis" that considers what actions a reasonably prudent person familiar with the mining industry would have taken under the same circumstances, the relevant facts, and the protective purpose of the regulation. *Am. Coal Co.*, 39 FMSHRC 8, 14 (Jan. 2017) (quoting *Mach Mining, LLC v. Sec'y of Labor*, 809 F.3d 1259, 1263–64 (D.C. Cir. 2016) (citation omitted)); *Brody Mining, LLC*, 37 FMSHRC 1687, 1702 (Aug. 2015). Based on the totality of the evidence, I conclude HCCR's negligence to be low.

4. Penalty Assessment for Citation No. 9587773

The Commission is not bound by the Secretary's proposed penalty and reviews penalty assessments *de novo*. *Mach Mining, LLC v. Sec'y of Labor*, 809 F.3d 1259, 1263–64 (D.C. Cir. 2016). Under section 110(i) of the Mine Act, I must consider six criteria in assessing a civil penalty: (1) the operator's history of previous violations; (2) the appropriateness of the penalty relative to the size of the operator's business; (3) the operator's negligence; (4) the penalty's effect on the operator's ability to continue in business; (5) the violation's gravity; and (6) the demonstrated good faith of the operator in attempting to achieve rapid compliance after notification of a violation. 30 U.S.C. § 820(i).

The Secretary proposes a penalty of $172.00 for Citation No. 9587773. (Ex. S–1.) HCCR is a large operator, mining 7,049,832 tons of coal at the Harrison County Mine in 2023. *Mine Data Retrieval System*, MSHA, https://www.msha.gov/data-and-reports/mine-data-retrieval-system (last visited Sept. 25, 2025). In the fifteen months preceding the issuance of this citation, MSHA issued to HCCR's Harrison County Mine nine violations of section 75.1722(a) that became final orders of the Commission. *Id.* The parties stipulated that the proposed penalties would not adversely affect HCCR's ability to continue in business. (Ex. Jt.–1.) I concluded that HCCR exhibited a low level of negligence. *See* discussion *supra* Part IV.B.3. Regarding gravity, I concluded that the violation was unlikely to result in a permanently disabling injury to one person. *See* discussion *supra* Part IV.B.2. Finally, HCCR demonstrated good faith in timely abating Citation No. 9787773 by replacing and installing the correct metal lid for the CN41 shuttle car. (Ex. S–2; Tr. 231:18–24.) In considering the criteria set forth in section 110(i) of the Mine Act and all the relevant facts, I hereby assess a penalty of $172.00.

V. FURTHER FINDINGS OF FACT, ANALYSIS, PRINCIPLES OF LAW, AND CONCLUSIONS OF LAW – CITATION NO. 9587893

A. Facts Relevant to Citation No. 9587893 – Work or Travel Under Unsupported Roof

On November 8, 2023, MSHA Inspector Richard W. Miller traveled to the Harrison County Mine to perform an annual survey in the 6-West section of the mine. (Tr. 89:17–92:7.) HCCR Representative Cody Pierce accompanied Inspector Miller for the survey, and Miller inspected each section's face as part of the survey. (Tr. 92:8–17, 96:20–97:4.)

When MSHA Inspector Miller arrived at the Number 1 Entry of the 6-West section of the mine, he observed beyond the last line of roof bolts a full footprint and two partial footprints that appeared to go around a ventilation curtain that hung on the last strap along the line of roof bolts.

(Tr. 96:20–97:23.) Miller recognized the markings on the ground as footprints because he saw clear tread marks from boots. (Tr. 97:25–98:25.) Alongside the footprints, Miller saw an indentation in the ground left by an automated temporary roof support ("ATRS"), as well as tire tracks from a center bolting machine. (Tr. 100:10–101:10, 109:23–111:7.) An ATRS is a machine that temporarily supports a mine's roof while a center bolting machine installs roof bolts into the mine's ceiling. (Tr. 99:2–101:10, 104:15–21, 109:13–110:13, 133:15–20.)

MSHA Inspector Miller noticed the indentations from the ATRS and center bolting machine were covered in white rock dust, whereas the footprints revealed the black coal dust base of the mine floor. (Tr. 97:25–98:25, 100:10–101:10.) HCCR employs a multistep roof support process involving sequential bolting, debris removal, and rock dusting. (Tr. 98:6–101:10, 109:23–110:24, 129:8–131:12, 131:17–25, 214:3–215:3, 291:24–294:6.) Based on the order of HCCR's roof support process and the contrast of the white rock dust covering the indentations from the ATRS and center bolting machine, but not the footprints, Miller concluded that whoever left the footprints in the white rock dust did so after the ATRS and center bolting machine were moved out of the entry. (Tr. 100:25–101:10.)

Inspector Miller then took a small rock and dropped it from a roof strap that ran between the last row of roof bolts, to use gravity as an aid, in measuring how far past the last row of roof bolts the full footprint was located. (Tr. 101:11–19, 102:3–21, 106:7–22.) Using his tape measurer, Miller measured the distance between the mark left by the rock in the rock dust and the nearest edge of the full footprint that ran parallel to the roof strap as 12 inches. (Tr. 101:11–19, 102:3–21, 106:7–22.) HCCR Representative Pierce observed Miller as he underwent this process and did not object to Miller's measurement method or his conclusion that the full footprint was 12 inches from the last row of roof bolts. (Tr. 101:20–102:5.)

Inspector Miller subsequently issued Citation No. 9587893 to HCCR based on his observation of "foot prints [*sic*] measuring 12 inches beyond the last permanent support." (Ex. S–3.) Miller designated the violation as "unlikely" to result in a "fatal" injury to one person and determined that HCCR exhibited a "low" level of negligence. (Ex. S–3.)

B. Analysis and Conclusions of Law: Citation No. 9587893 – Work or Travel Under Unsupported Roof

1. Violation of 30 C.F.R § 75.202(b) – Work or Travel Under Unsupported Roof

The Secretary argues that HCCR violated section 75.202(b), a mandatory safety standard requiring that "[n]o person shall work or travel under unsupported roof unless in accordance with this subpart." (Sec'y Br. at 13); 30 C.F.R § 75.202(b).

HCCR points to Mine Supervisor James Alexander Pancost's testimony that, after receiving notice that MSHA Inspector Miller intended to issue the citation, he went to the cited location with Miller and only saw irregularities caused by machine tracks in the mine floor. (Resp't Br. at 11, 15; Tr. 215:21–217:17, 218:11–22, 219:8–15, 221:12–19, 222:15–24.) Pancost, however, admits he was not present when Miller first observed the alleged violation. (Tr. 215:21–216:17.) On the other hand, Miller observed the ATRS and center bolting machine

track indentations covered in white rock dust, which contrasted with the footprints that revealed the black coal dust base of the mine floor following a path around the ventilation curtain that hung on the last roof bolt strap. (Tr. 96:20–97:23, 97:25–98:25, 100:10–101:10.) Miller said HCCR Representative Pierce acknowledged the footprints during his inspection and did not dispute their identification as such. (Tr. 108:22–109:8.) Lastly, Miller's testimony is consistent with his contemporaneous notes that the markings he observed were clearly footprints. (Tr. 96:20–97:23, 98:6–14; Ex. S–3.) Miller has eighteen years of experience as a coal miner and an additional seventeen years as a mine inspector for MSHA. (Tr. 89:10–91:9.) In considering the evidence before me, I credit Miller's testimony and find that the cited markings he observed were footprints.

a. Whether the footprints were past the last row of roof bolts

HCCR argues that Citation No. 9587893 should be vacated because MSHA Inspector Miller's measurement method was unreliable and, therefore, the Secretary cannot establish that the full-sized footprint was past the last row of roof bolts. (Resp't Br. at 11–12, 15–16.) Specifically, HCCR argues that Miller's measurement did not account for the angle Miller dropped the rock from and the undulations of the mine floor and roof. (Resp't Br. at 11–12.) Additionally, HCCR points to Mine Supervisor Pancost's testimony that he could not conclude that the irregularity—i.e., the "footprint"—was actually inby the last row of permanent supports. (Resp't Br. at 12; Tr. 221:12–19.) In response, the Secretary contends that HCCR "misunderstands basic physics" and maintains that Miller's testimony reliably establishes that the footprint was beyond the last row of roof bolts. (Sec'y Reply at 5.)

MSHA Inspector Miller explained that he dropped the rock from the last roof strap to account for the floor's slope and then measured from where it landed to the footprint—a method that HCCR Representative Pierce observed without objection. (Tr. 101:11–102:21.) First, a falling rock would not vary by angle but would follow the same trajectory if dropped from the spot Miller used. Second, even if I assume the undulations of the mine floor could affect Miller's precise measurement of the distance between the mark left by the rock and the footprint, the measurement is still generally reliable and establishes the footprints were beyond the last row of roof bolts.

Inspector Miller's identification of footprints past the last row of roof bolts is also consistent with his contemporaneous notes. (Tr. 96:20–98:14; Ex. S–3.) Although Mine Supervisor Pancost testified he could not conclude whether the irregularity in the mine floor—i.e. the footprint—was located inby the last row of roof bolts, he contradicted himself shortly afterward, stating the "irregularity" was located in "the area where [Miller] . . . was claiming [there] was a footprint, inby and outby there." (Tr. 221:12–19, 222:15–24.) Thus, Pancost's testimony on the location of the footprint is unclear. Miller, in addition to explaining his observations and measurement methods, has extensive experience in the coal mining industry and as an inspector. (Tr. 89:10–91:9.) Considering all the evidence on this issue, I determine that Miller's method of dropping a rock from the last roof strap was sufficient to measure the distance between the full-sized footprint and the last row of roof bolts. Accordingly, I find that the partial and full-sized footprints were located past the last row of roof bolts, meaning a miner worked or traveled beyond the last permanent roof support.

b. Whether the footprints were made while roof was supported by an ATRS

In the alternative, HCCR argues that Citation No. 9587893 should be vacated because the cited footprints could only have been made while the roof was temporarily supported by an ATRS. (Resp't Br. at 10, 15–16.) In response, the Secretary argues that MSHA Inspector Miller's testimony establishes that the footprints were made after the ATRS was removed from the area and, therefore, while the roof was unsupported. (Sec'y Br. at 15; Sec'y Reply at 4.)

HCCR installs its roof supports in a three-phase cycle. First, HCCR utilizes a continuous miner machine to mine a path through the entry. (Tr. 109:23–110:13, 129:8–130:15, 214:18–215:3; Ex. R–2.) As the continuous miner progresses, roof bolting equipment attached to the continuous miner installs two outside bolts to create an initial row of roof bolts ten feet apart. (Tr. 99:2–100:18, 109:23–110:13, 129:8–130:15; Ex. R–2.) As this occurs, a loader machine removes any debris in the continuous miner's wake and "rock dusts"—i.e., spreads white lime rock dust to prevent coal dust from triggering an explosion—in the area behind the continuous miner, including the mine floor. (Tr. 98:15–25, 110:3–24, 130:12–19, 214:3–215:3; Ex. R–2.) Once the rock dusting is completed, the continuous miner and loader machine are removed from the mine pathway and the second phase of the bolting process begins. (Tr. 109:23–110:13, 130:24–131:12; Ex. R–2.) Here, HCCR utilizes an ATRS to temporarily support the mine roof while a center bolting machine installs center bolts to complete the row of roof bolts. (Tr. 99:2–100:23, 109:23–110:13, 130:24–131:12, 133:15–20; Ex. R–2.) HCCR then removes the ATRS and center bolting machine from the mine pathway and moves on to the third and final phase of the mining cycle. (Tr. 99:2–12, 100:25–101:5, 109:23–110:19; Ex. R–2.) During this third phase, HCCR typically utilizes a "flinger duster" to again thoroughly cover the black, dusty coal mine floor, ribs, and roof with white lime rock dust. (Tr. 98:6–99:12, 110:14–24, 131:17–25.)

MSHA Inspector Miller noted that the tread marks from the boots contrasted against the surrounding white lime rock dust as the tread marks were black, because of "coal exposed underneath the rock dust" as "indication of the footprint." (Tr. 97:9–98:25.) Miller observed indentations and tire tracks next to the footprints, which he recognized as having been created by the center bolting machine and ATRS. (Tr. 100:10–101:10.) Miller saw that the indentations in the mine floor from the machines were coated in white lime rock dust, whereas the full-sized boot print was not covered in any white lime rock dust. (Tr. 100:10–101:10.) From this, Miller inferred that HCCR must have rock dusted the area after the center bolting machine and ATRS had been moved out of the entry. (Tr. 100:10–101:10.) Miller stated that the area where he observed the cited footprints was freshly rock dusted to such a degree it was obvious HCCR had used a "flinger duster" to rock dust the area. (Tr. 98:6–99:12, 131:22–132:17.) Therefore, Miller concluded that the cited footprint must have been made after HCCR used the "flinger duster," and not while the ATRS temporarily supported the roof. (Tr. 100:10–101:10.)

In contrast, HCCR cites Mine Supervisor Pancost's testimony that the white lime rock dust present at the time of the citation came from the loader machine's initial rock dusting, and the area had not yet received its final dusting. (Resp't Br. at 10–11, 15–16; Resp't Reply at 4; Tr. 213:13–214:17, 215:12–20.) However, as outlined in the timeline above, additional rock dusting occurs only after the roof has been center-bolted and both the ATRS and center bolting machine have been removed from the area. (Tr. 98:6–99:12, 100:25–101:5, 109:23–19, 110:3–

24, 130:12–19, 131:17–25, 214:3–215:3.) Thus, indentations left by the ATRS and center bolting machine would only be covered by white lime rock dust during the final phase of rock dusting, after both machines are removed from the entry. Hence, if white lime rock dust covered indentations left by the ATRS and center bolting machine but not the cited footprints, the footprints could only have been made after the third phase of the mining cycle, and thus, after the machines' removal from the area. Accordingly, I find that the cited footprint was made after the center bolting machine and ATRS were removed—i.e., when no temporary roof support existed.

c. Whether the area past the last row of roof bolts is supported roof

HCCR argues section 75.202(b) does not specify that miners cannot work or travel inby the last permanent roof support but, rather, only restricts miners from working and traveling under unsupported roof. (Resp't Br. at 12–13, 16.) In support, HCCR highlights a distinction between sections 75.210(a) and 75.202(b) in which the term "permanent support" is used in section 75.210(a), whereas the term "unsupported roof" is used in section 75.202(b). (Resp't Br. at 12–13, 16.) Relying on Mine Engineer Kevin Burton's testimony that the area beyond the last row of roof supports was not "unsupported roof," HCCR argues that Citation No. 9587893 should be vacated. (Resp't Br. at 12–16; Tr. 284:5–300:2; Exs. R–1, R–2.)

In response, the Secretary argues that under section 75.202(b) any area beyond the last line of roof bolts qualifies as "unsupported roof." (Sec'y Br. at 14; Sec'y Reply at 5–6.) The Secretary asserts that interpreting section 75.202(b) otherwise would create an unworkable rule such that miners would need to assess the roof's structural integrity to determine where the support ends. (Sec'y Br. at 9, 14; Sec'y Reply at 5–6.) The Secretary notes that ALJs have consistently upheld citations issued under section 75.202(b) for miners going past the last row of roof bolts. (Sec'y Br. at 14.) The Secretary also asserts that HCCR's distinction between sections 75.210(a) and 75.202(b) lacks any significance when the sections are read in their entirety and in conjunction with one another. (Sec'y Reply at 5–6.)

The entirety of section 75.202(b) states that "[n]o person shall work or travel under unsupported roof *unless in accordance with this subpart*." 30 C.F.R § 75.202(b) (emphasis added). The only exceptions in the subpart—section 75.210(a) and (d)—state respectively that "[w]hen manually installing temporary support, only persons engaged in installing the support shall proceed beyond permanent support," and "[o]nce temporary supports have been installed, work or travel beyond permanent roof support shall be done between temporary supports and the nearest permanent support or between other temporary supports." 30 C.F.R § 75.210(a), (d). The regulation makes no exception for work or travel beyond permanent supports without temporary supports in place, even if the roof is considered "supported" under HCCR's contention. Although section 75.202(b) uses the term "unsupported roof" rather than "permanent support," HCCR's focus on this distinction misses the forest for the trees.

Indeed, other roof regulations offer guidance on what qualifies as "unsupported roof" and whether work or travel is permitted beyond permanent roof supports. For example, section 75.208 requires that, "[e]xcept during the installation of roof supports, the end of permanent roof support shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel beyond permanent support." 30 C.F.R § 75.208. In the preamble to section

75.208, MSHA suggests that operators could comply with the standard by hanging a reflective device "*on the last row of roof bolts* or other permanent roof support." Safety Standards for Roof, Face and Rib Support, 53 Fed. Reg. 2,354-01, 2,361–62 (Jan. 27, 1988) (emphasis added). If, as HCCR contends, section 75.202(b) allows work or travel beyond the last row of roof supports without a temporary support in place, then requiring operators to install warning signs or barriers to prevent such travel would be illogical.

The regulatory history of section 75.202(b) similarly illustrates MSHA's intent. In the preamble to section 75.202(b), MSHA explains that while the "primary objective of the final rule is to reduce the incidence of these accidents by prohibiting miner exposure to unsupported roof . . . [,] a prohibition against all exposure to unsupported roof would be impractical since some exposure is inherent *when temporary supports are manually installed* in unsupported areas." 53 Fed. Reg. at 2355 (emphasis added). Evidently, MSHA did not want to take a draconian approach by preventing all travel beyond permanent supports, because "some exposure is inherent when temporary supports are manually installed in unsupported areas." *Id.* Other than the exceptions outlined in the roof support regulations, MSHA sought to continue the "existing general prohibition against work or travel under unsupported roof." *Id*.

Both the regulatory history of section 75.202(b) and the broader framework of roof control regulations support the Secretary's long-established interpretation of section 75.202(b) that any work or travel beyond the last row of roof support, without a temporary support in place, is considered work or travel under unsupported roof and is therefore a violation of the standard. *See, e.g.*, *Wilcoal Mining, Inc.*, 35 FMSHRC 700, 712 (Mar. 2013) (ALJ) (finding a violation of section 75.202(b) because "centerline paint extending four feet beyond the last row of roof bolts together with visible footprints on the floor under that paint made the violation very obvious" that a miner walked under "unsupported roof"); *Doss Fork Coal Co., Inc.*, 16 FMSHRC 797, 812–13 (Apr. 1994) (ALJ) (holding "it is clear that [a] violation [of section 75.202(b)] is proven as charged," as the roof bolter operator was exposed to unsupported roof by having his entire body beyond the roof strap and his head 6 inches inby the last roof bolt).

Notably, even Mine Engineer Burton—cited by HCCR to support its claim that the area beyond the last row of roof bolts was "supported"—never trains miners to believe it is safe to step beyond the last row of roof support bolts. (Tr. 303:17–20.) Therefore, in considering the evidence, case law, and regulatory history, I reject HCCR's argument and determine that, under section 75.202(b), any work or travel beyond the last row of roof support, without a temporary support in place, is considered work or travel under unsupported roof.

Accordingly, based on my findings that a miner worked or traveled beyond the last row of roof bolts with no temporary roof support present (*see* discussion *supra* Part V.B.1.a), I conclude that HCCR violated section 75.202(b).

2. Gravity Designations for Citation No. 9587893

HCCR does not dispute the Secretary's gravity determinations for Citation No. 9587893. (Resp't Br. at 15–16; Resp't Reply at 3–5.) MSHA Inspector Miller assessed the likelihood of injury or illness to be "unlikely," because the roof above the area where the footprints were

found "appear[ed] to be solid with no signs of roof failure." (Ex. S–3; Tr. 108:5–10.) Miller also determined the violation could result in a "fatal" injury to one person because several mines have experienced fatalities from falling roofs. (Ex. S–3; Tr. 106:23–108:4.) He further noted that if the unsupported roof collapsed while a miner was beneath it, serious injury or death could occur as it does not "take a very big piece of rock to break somebody's neck" if it drops from that height. (Ex. S–3; Tr. 107:24–108:4.) I agree with Miller's assessment and conclude that an incident involving the violative conditions was unlikely to cause a fatal injury to one person.

3. Negligence Designation for Citation No. 9587893

MSHA Inspector Miller designated HCCR's negligence as "low" which HCCR does not dispute. (Resp't Br. at 15–16; Resp't Reply at 3–5.) The Secretary asserts that "given the lack of any indication that the miner knew they were past the last row, the lack of prior violations, [HCCR]'s compliance with its roof control plan, and the presence of required warning reflectors," HCCR exhibited a "low" degree of negligence. (Sec'y Br. at 15.) The Commission evaluates the degree of negligence using a traditional negligence analysis. *See* discussion *supra* Part IV.B.3. In consideration of the Secretary's assertions, and based on the totality of the evidence, I conclude that HCCR exhibited a low degree of negligence.

4. Penalty Assessment for Citation No. 9587893

Under section 110(i) of the Mine Act, I must consider six criteria in assessing a civil penalty. *See* discussion *supra* Part IV.B.4. The Secretary proposes a penalty of $357.00 for Citation No. 9587893. (Ex. S–1.) HCCR is a large operator, mining 7,049,832 tons of coal at the Harrison County Mine in 2023. *Mine Data Retrieval System*, MSHA, https://www.msha.gov /data-and-reports /mine-data-retrieval-system (last visited Sept. 25, 2025). In the fifteen months preceding the issuance of this citation, MSHA did not issue any violations of section 75.202(b) to HCCR's Harrison County Mine. *Id.* The parties stipulated that the proposed penalties would not adversely affect HCCR's ability to continue in business. (Ex. Jt.–1.) I concluded that HCCR exhibited a low level of negligence. *See* discussion *supra* Part V.B.3. Regarding gravity, I concluded that the violation was unlikely to result in a fatal injury to one person. *See* discussion *supra* Part V.B.2. Finally, HCCR demonstrated good faith in abating Citation No. 9787893 by holding a safety discussion for all three mine shifts to discuss travel under unsupported roofs and the cited violation. (Ex. S–3.) In considering the criteria set forth in section 110(i) of the Mine Act and all the relevant facts, I hereby assess a penalty of $357.00.

VI. FURTHER FINDINGS OF FACT, ANALYSIS, PRINCIPLES OF LAW, AND CONCLUSIONS OF LAW – CITATION NO. 9587919

A. Facts Relevant to Citation No. 9587919 – Failure to Maintain a Permanent Ventilation Control

MSHA requires mine operators to follow an approved ventilation plan that establishes a minimum airflow rate for each mine. HCCR's ventilation plan requires it to maintain proper air pressure differentials to ensure clean air flows in the intended direction. (Tr. 200:15–201:17, 275:24–276:17.) As part of its ventilation plan, HCCR uses block stoppings—a permanent

ventilation control made of 8-inch-thick cinder blocks. (Tr. 113:23–114:4.) The purpose of block stoppings is to separate intake air (i.e., clean air from outside) from return air (i.e., dirty air containing gases and dust that has swept the mine face). (Tr. 114:5–17, 122:11–16, 149:8–25, 153:24–154:6, 275:25–276:17.) If too much clean air is diverted before reaching the face, the face will be insufficiently ventilated. (Tr. 114:18–115:4, 275:25–276:17.) As part of the mining process, miners often create holes in block stoppings to allow a fan's cable to pass through it. (Tr. 115:18–23, 152:25–153:15, 180:1–12.) When HCCR does this, it seals the area around the cable using partial cinder blocks and plaster to prevent air leakage. (Tr. 115:18–116:4, 197:6–22, 204:4–9, 205:23–206:7.)

On January 6, 2024, MSHA Inspector Miller travelled to the Harrison County Mine to perform a routine methane inspection in the 7-Tailgate section of the mine. (Tr. 112:4–17, 169:12–23; Ex. R–3.) HCCR Safety Inspector Jonah Stackpole and Union Representative John Taylor accompanied Miller on his inspection. (Tr. 116:15–23, 174:4–13; Ex. S–4.) At the time of the inspection, HCCR was not actively mining but undergoing a "belt and power move"—a process that involves relocating equipment such as conveyor belts, fans, shuttle cars, and other miscellaneous machinery. (Tr. 112:18–113:14, 171:17–22, 180:7–12, 192:15–20.)

As MSHA Inspector Miller inspected the 7-Tailgate section, he noticed a cable going through a 4-by-4.5-inch hole in the upper left corner of one of HCCR's block stoppings, about 7-1/2 feet above the ground. (Tr. 115:5–17, 179:7–16, 180:19–22, 186:11–16; Ex. S–4.) The hole was clearly visible, positioned just in front of the date board where the pre-shift examiner conducts inspections. (Tr. 120:3–25, 197:6–13; Ex. S–4.) Additionally, dust had accumulated around the perimeter of the hole. (Tr. 121:6–17, 152:5–14.)

To assess the air flow through the hole, MSHA Inspector Miller clapped dust into the air and traced its path. (Tr. 117:3–14.) The dust—and thus, the air—traveled through the hole, meaning the hole allowed air from the intake side to mix with the mine's return air. (Tr. 117:3–14, 202:1–15, 203:5–18.) Miller then took methane and air flow readings at the mine face, which were normal, indicating the hole did not have a measurable effect on the mine's ventilation. (Tr. 117:15–23, 176:18–177:9.)

Accordingly, MSHA Inspector Miller issued Citation No. 9587919 to HCCR citing "[t]he permanent ventilation control, (block stopping) separating the intake and return air at 14 block outby the 7Tg section" for "not [being] maintained to serve the purpose for which it was built. [As t]here is a 4″ by 4 1/2″ hole in the top left corner." (Ex. S–4.) Miller designated the violation as "unlikely" to result in "lost workdays or restricted duty" for one person and determined that HCCR exhibited a "moderate" level of negligence. (Ex. S–4.)

B. Analysis and Conclusions of Law: Citation No. 9587919 – Failure to Maintain a Permanent Ventilation Control

1. Violation of 30 C.F.R § 75.333(h) – Hole in Block Stopping

The Secretary argues that HCCR violated section 75.333(h), a mandatory safety standard requiring that "[a]ll ventilation controls, including seals, shall be maintained to serve the purpose

for which they were built." (Sec'y Br. at 16); 30 C.F.R § 75.333(h). Specifically, the Secretary alleges that HCCR violated section 75.333(h) by failing to maintain a block stopping—a permanent ventilation control—for the purpose for which it was built, by leaving a 4″x 4.5″ hole in it. (Sec'y Br. at 1, 16–18; Sec'y Reply at 2–4.) In response, HCCR makes several arguments that I address below.

a. Purpose of a permanent ventilation control

HCCR argues that according to the regulatory history of section 75.333, a hole in a permanent ventilation control does not "violate the standard as long as ventilation is maintained inby and the pressure differentials are maintained causing the air to course in the proper direction," which was the case here. (Resp't Br. at 3, 6.) In support of its assertions, HCCR cites the preamble of section 75.333(h) which states, "MSHA agrees that to properly direct the flow of air and provide for adequate face ventilation, temporary controls, as well as all permanent ventilation controls, must be installed and maintained in an adequate manner to control leakage." (Resp't Br. at 6–7); Safety Standards for Underground Coal Mine Ventilation, 61 Fed. Reg. 9,764, 9,784 (Mar. 11, 1996). HCCR contends this language "contemplates that an operator will control leakage, not eliminate it." (Resp't Br. at 7.) Accordingly, HCCR argues that the cited hole in the block stopping was simply "leakage" that did not need to be eliminated to comply with section 75.333(h). (Resp't Br. at 3–4, 7–9.)

HCCR's "leakage" arguments fail for three reasons. First, HCCR notes that holes in block stoppings can be made to ventilate battery chargers and thus allow air to pass through it. (Resp't Br. at 3–4; Resp't Reply at 2.) But MSHA Inspector Miller explained that creating such holes changes the block stopping (i.e., a permanent ventilation control) into a "regulator" which falls under different regulations. (Tr. 147:1–148:18.) Thus, the argument is immaterial.

Second, under HCCR's interpretation of section 75.333(h), a violation would only occur when leakage in a permanent ventilation control became so severe that an insufficient amount of clean intake air reached the mine face. As the Secretary points out, in applying HCCR's interpretation of section 75.333(h), an inspector could only find a violation of the standard by measuring a drop in air pressure at the mine face. (Sec'y Br. at 16–17; Sec'y Reply at 2.) Yet, in such circumstances, an inspector could already cite an operator under section 75.325—the standard that establishes minimum air pressure requirements throughout the mine. (Sec'y Reply at 2); 30 C.F.R. § 75.325. Therefore, HCCR's interpretation of section 75.333(h) renders it duplicative of section 75.325. Moreover, HCCR's strained interpretation would not only lead to confusion in practice but would court disaster, as it is akin to saying a fire hose is sufficient only until so many holes appear that the water barely reaches the flames.

Third, the preamble to section 75.333 states that the purpose of a permanent ventilation control is to "provide ventilation to working sections and other areas where it is needed to dilute methane, respirable coal mine dust and other contaminants." 61 Fed. Reg. at 9,782. Logically, a block stopping fulfills its purpose when it is "correctly constructed [and] maintained" to separate clean intake air from dirty return air, thereby helping to dilute methane, respirable coal mine dust, and other contaminants. *Id.* Commission Judges have found likewise. *See, e.g.*, *Consol Pennsylvania Coal Co., LLC*, 41 FMSHRC 626, 687–91 (Oct. 2019) (ALJ) (affirming

inspector's finding that a wall stopping was not maintained to serve the purpose for which it was built because the wall stopping had a hole measuring 3 inches by 7 inches); *Twentymile Coal Co*., 2012 WL 7761935, 1, 18–19 (Aug. 2012) (ALJ) (holding that a block stopping was not maintained to serve the purpose for which it was built because it had unfilled cracks). Despite HCCR's claims that the stopping was correctly maintained, I find its arguments unpersuasive because the hole in the block stopping undisputedly allowed air to pass through it, defeating its purpose of separating intake air from return air. (Resp't Br. at 5–6; Tr. 117:3–14, 202:1–15, 203:5–18.)

Notably, in *Twentymile Coal Co*., 33 FMSHRC 1885, 1892–93 (Aug. 2011) (ALJ), a Commission Judge found the operator failed to maintain a block stopping in violation of section 75.333(h) due to a 4- by 2-inch hole in the block stopping. HCCR attempts to distinguish *Twentymile Coal* from this case by noting that the cited hole in HCCR's block stopping was created during a "belt and power move" to remove a fan's power cable that ran through the block stopping. (Resp't Br. at 6, 8–9; Resp't Reply at 3; Tr. 112:18–113:14, 171:17–22, 180:7–12, 192:15–20.) Yet, this distinction is unpersuasive since "[u]nder section 110(a) of the Mine Act . . . the operator of a coal mine faces strict liability for any violation of a mandatory safety standard." *Freeman United Coal Mining Co. v. FMSHRC*, 108 F.3d 358, 360 (D.C. Cir. 1997). Thus, the fact that the cited hole was created during a belt and power move has no bearing on whether HCCR violated section 75.333(h). Rather, the consideration of the belt and power move goes towards the determination of HCCR's negligence, not the fact of a violation.

b. Whether HCCR violated 30 C.F.R. 75.333(h)

Neither party disputes that the cited block stopping is a permanent ventilation control that is supposed to separate intake air from return air. (Resp't Br. at 1, 5–6; Sec'y Br. at 7; Sec'y Reply at 1–2.) Furthermore, HCCR does not contest that it created a hole in the block stopping which allowed air to flow through it. (Resp't Br. at 1, 5–6.) Therefore, based on my determination that the purpose of block stoppings is to separate intake air from return air by preventing airflow through it, I determine that HCCR's creation of a hole in the block stopping that allowed air to pass through it constitutes a failure to maintain the block stopping for its intended purpose. *See* discussion *supra* Part VI.B.1.a. Accordingly, I conclude that the Secretary has established that HCCR violated section 75.333(h).

2. Gravity Designations for Citation No. 9587919

HCCR does not dispute the Secretary's gravity determinations for Citation No. 9587919. (Resp't Br. at 6–9; Resp't Reply at 1–3.) MSHA Inspector Miller concluded that the hole in the block stopping did not pose an immediate hazard, but he determined it could lead to a "lost workdays or restricted duty" injury if allowed to persist, given holes in block stoppings can lead to air recirculation or insufficient intake air at the mine face. (Tr. 118:13–120:2.) Insufficient intake air can allow return air to recirculate through the mine causing dust inhalation that can lead to Black Lung Disease or pneumoconiosis. (Tr. 122:11–25.) Without enough clean intake air to dilute the methane expelled during mining, methane can also accumulate at the face and become a hazard due to ignition sources. (Tr. 122:11–25; Ex. S–4.) Here, I agree with Miller's

reasoning and conclude that the violative conditions were "unlikely" to cause injury to a miner resulting in "lost workdays or restricted duty."

3. Negligence Designation for Citation No. 9587919

The Secretary argues that MSHA Inspector Miller correctly assessed HCCR's negligence as "moderate" because HCCR has repeatedly forgotten to patch holes in block stoppings; HCCR was aware of the hole in the stopping; and the cited hole was in plain view of Section Foreman Allan Stewart. (Sec'y Br. at 17–18.) HCCR does not directly dispute the Secretary's designation of "moderate" negligence. (Resp't Br. at 6–9; Resp't Reply at 1–3.)

MSHA Inspector Miller pointed out that the cited block stopping was located in a frequently traveled area where the pre-shift examiner responsible for maintaining ventilation controls in the 7-Tailgate section of the mine conducts his pre-shift examinations. (Tr. 120:3–25, 121:23–25; Ex. S–4.) Miller did not know exactly how long the cited hole in the block stopping had been left unsealed, but he estimated it had been present since at least the last pre-shift examination—which occurs every eight hours—based on the accumulation of dust outside the hole's perimeter. (Tr. 120:3–121:13.) However, Section Foreman Stewart testified that the cited hole in the block stopping was created the same day Miller issued the citation, shortly after the start of the afternoon shift at 4:30 p.m., when Stewart instructed miners to make the hole so they could move the cable for the belt and power move. (Tr. 197:6–22, 198:9–20.) Because Miller simply estimated the length of time the hole in the block stopping was present, whereas Stewart directly ordered the creation of the hole, I credit Stewart's testimony regarding the length of time the cited hole existed. Therefore, since Miller issued Citation No. 9587919 at 6:25 p.m., I determine that the violation was present for at most two hours. (Ex. S–4.)

Additionally, HCCR Safety Inspector Stackpole and Section Foreman Stewart confirmed that HCCR was conducting a belt and power move, requiring it to create a hole in the block stopping to remove the power cable running through it. (Tr. 112:18–113:14, 171:17–22, 180:7–12, 192:15–20); *see* discussion *supra* Part VI.B.1.a. However, MSHA Inspector Miller testified that when a cable in a block stopping is removed, the operator should immediately seal the hole to prevent any leakage. (Tr. 115:18–116:4.) Indeed, Stewart testified that a hole in a block stopping should be immediately sealed once the fan's cable is removed. (Tr. 197:6–22, 204:4–9, 205:23–206:7.) Although I determine HCCR's creation of the hole in the block stopping as part of a belt and power move to be a mitigating factor towards its level of negligence, I give it less weight because Stewart acknowledged the hole should have been patched immediately.

Based on the discussion above, I determine that HCCR's creation of the hole in the block stopping as part of a belt and power move, and the short amount of time that the hole was present, are mitigating factors towards HCCR's negligence. Therefore, after weighing all the evidence, I conclude that HCCR exhibited a low degree of negligence.

4. Penalty Assessment for Citation No. 9587919

Under section 110(i) of the Mine Act, I must consider six criteria in assessing a civil penalty. *See* discussion *supra* Part IV.B.4. The Secretary proposes a penalty of $305.00 for

Citation No. 9587919. (Ex. S–1.) HCCR is a large operator, mining 7,049,832 tons of coal at the Harrison County Mine in 2023. *Mine Data Retrieval System*, MSHA, https://www.msha.gov /data-and-reports/mine-data-retrieval-system (last visited Sept. 25, 2025). In the fifteen months preceding the issuance of this citation, MSHA issued to HCCR's Harrison County Mine thirteen violations of section 75.333(h) that became final orders of the Commission. *Id.* The parties stipulated that the proposed penalties would not adversely affect HCCR's ability to continue in business. (Ex. Jt.–1.) I concluded that HCCR exhibited a low level of negligence. *See* discussion *supra* Part VI.B.3. Regarding gravity, I concluded that the violation was unlikely to cause an injury resulting in lost workdays or restricted duty to one person. *See* discussion *supra* Part VI.B.2. Finally, HCCR demonstrated good faith by patching the hole in the cited block stopping, a repair confirmed by MSHA Inspector Moyer five days after MSHA Inspector Miller issued the citation. (Ex. S-4.) In considering the criteria set forth in section 110(i) of the Mine Act and all the relevant facts, I hereby assess a penalty of $200.00.

VII. ORDER

In light of the foregoing, it is hereby **ORDERED** that Citation Nos. 9587773 and 9587893 are **AFFIRMED** as written. It is further **ORDERED** that Citation No. 9587919 is **MODIFIED** from "moderate" to "low" negligence and is otherwise **AFFIRMED** as written.

Respondent is **ORDERED** to pay a combined civil penalty of **$729.00** for Citation Nos. 9587773, 9587893, and 9587919, within 40 days of this decision.[2]

Alan G. Paez
Administrative Law Judge

Distribution: (Via Electronic Mail)

David J. Casserly, Esq., U.S. Department of Labor, Office of the Solicitor
201 12th Street South, Suite 501, Arlington, VA 22202-5450
(casserly.david.j@dol.gov)
(epstein.matthew.r@dol.gov)

Christopher D. Pence, Esq. & Scott Wickline, Esq., Pence Law Firm PLLC
P.O. Box 2548, Charleston, WV 25329-2548
(cpence@pencefirm.com)
(swickline@pencefirm.com)

/JPN

[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.