

functioned only intermittently and, as a result, issued the citation. The inspector determined that the negligence level was moderate, and MSHA proposed a penalty of \$100.

The factual dispute between the parties centered on whether the scraper's horn functioned when tested by the inspector. Beverly argued that the horn worked when it was tested during a pre-operation examination and that it worked while the scraper was operating. The inspector acknowledged that he heard the horn work while the scraper was operating, but testified that it never worked during his testing. Tr. 229. Beverly's production superintendent testified that the horn worked intermittently during the inspector's testing, and conceded that at times it did not work. Tr. 239. Ultimately, the horn was replaced because it was found to be unreliable.

The Judge vacated the citation. According to the Judge, "the horn was working when the shift began and only later started acting up, working intermittently thereafter." 35 FMSHRC 88, 98 (Jan. 2013) (ALJ). The Judge found that the horn's intermittent functioning satisfied section 56.14132(a)'s requirement that horns on mobile equipment "be maintained in functional condition." As a result, he vacated the citation. *Id.*

The Secretary of Labor filed a petition for discretionary review, which we granted.

II.

Disposition

We conclude that the Judge erred in vacating the citation. The language of section 56.14132(a) is clear and imposes a continuing responsibility on operators to ensure that horns function at all times. Our cases have uniformly applied the plain language of such standards. In *Wake Stone Corp.*, 36 FMSHRC 825, 827 (Apr. 2014), the Commission held that the plain language of section 56.14132(a) requires that horns or other audible warning devices must function at all times unless the equipment has been taken out of service for repair. The Commission further held that the term "'maintain' [means] that warning devices shall be capable of performing on an uninterrupted basis." *Id.* (citations omitted). Thus, the standard "imposes a continuing responsibility on operators to ensure that safety alarms do not fall into a state of disrepair." *Id.* (citations omitted). *See also Nally & Hamilton Enterprises, Inc.*, 33 FMSHRC 1759, 1762-63 (Aug. 2011) (finding that the words "maintain" and "functional" in 30 C.F.R. §77.410(c) plainly require that warning devices be capable of uninterrupted performance at all times).

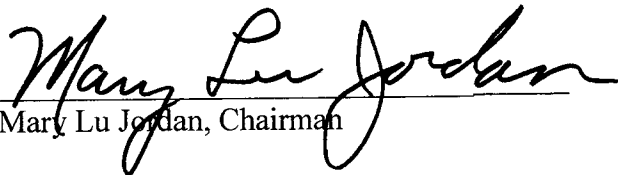
Nally & Hamilton is closely analogous to the present matter. The mine operator in that case argued that it had not violated the standard, because the back-up alarm on a piece of equipment worked during the operator's pre-operation examination even though it did not work when tested by an MSHA inspector. *Id.* at 1761-64. As in *Nally & Hamilton*, we reject the operator's argument here, as it would likewise create an exception to the express requirements of the standard and contravene the strict liability principles and safety objectives of the Act. *See also Lopke Quarries, Inc.*, 23 FMSHRC 705, 708 (July 2001) ("The inclusion of the word 'maintain' in the standard . . . incorporates an ongoing responsibility on the part of the operator").

Because the manually operated horn in the present case worked only intermittently (Tr. 232, 239), we hold that Beverly violated the standard and that the Judge erred in vacating the citation.

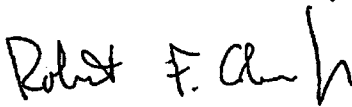
III.

Conclusion

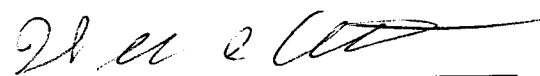
For the reasons stated above, we reverse the Judge's decision and rule that section 56.14132(a) was violated. We remand the case to the Judge to assess a civil penalty.


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Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner


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