

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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November 24, 2015

TXI OPERATIONS LP,  
Contestant,

v.

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

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

v.

TXI OPERATIONS LP,  
Respondent.

CONTEST PROCEEDING

Docket No. CENT 2015-101-RM  
Order No. 8774407; 10/15/2014

Mine: Hunter Cement Plant  
Mine ID: 41-02820

CIVIL PENALTY PROCEEDINGS

Docket No. CENT 2015-176-M  
A.C. No. 41-02820-368753

Docket No. CENT 2015-388-M  
A.C. No. 41-02820-378255

Mine: Hunter Cement Plant

**ORDER DENYING SETTLEMENT**

Before: Judge Moran

These cases are before the Court upon two petitions for assessment of civil penalties and one notice of contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The Secretary has filed a motion to approve settlement. The originally assessed amount for the two penalty dockets was \$7,314.00, and the proposed settlement is for \$4,294.00. At least for purposes of this Motion, the Secretary has decided to vacate the imminent danger order, Order No. 8774407, contested in CENT 2015-101-RM. For Citation Nos. 8774406 and 8774409, contained in CENT 2015-388-M and CENT 2015-176-M, respectively, TXI Operations LP (“Respondent”) has agreed, for now, to accept those citations as written and pay the full penalty amount.<sup>1</sup>

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<sup>1</sup> Should the matter continue to hearing, with the settlement denied, the Secretary and the Respondent would be free to withdraw all aspects of the motion, not simply the citation about which the Court has issues.

For Citation No. 8774408, a matter in which the Secretary seeks an 80% reduction in his proposed settlement, from \$3,784.00 to \$764.00, the motion must be denied for lack of sufficient justification. In that citation, the Inspector recorded that “[t]he exit ramp at scale 1 [one] had a broken bolt on the support under the grating causing the platform *to lean towards the exit end of the scale. Both top bolts on the platform were bent and continued operation of the system could further damage the bolts.*” (emphasis added). Further, the Inspector noted that “[a] customer truck driver *had been observed using the ramp* to close the lid/hatch on top of the tanker. Continued operation of this system could expose a person to a fall hazard if the platform fails due to the defective bolts.” (emphasis added). The situation was deemed serious enough by the Inspector that he issued an imminent danger order, Order No. 8774407. It was the Inspector’s further evaluation that the violation was significant and substantial and that the injury was “Highly Likely” with a fatality to be reasonably expected. Negligence was listed as “Moderate.”

Despite the Inspector’s description of the condition, and his observation of a miner using the leaning platform, the Secretary’s eighty-five word settlement for this citation provided a total of 32 words to justify the reduction: “*Respondent asserts that all four bolts supporting the ramp’s handrails would have to break to expose miners to a fall hazard. The MSHA Inspector observed that one bolt of four was bent.*” Motion at 3 (emphasis added). Of those 32 words, 11 are, based on the face of the citation, inaccurate. As noted, the Inspector averred that *two* bolts, *not one*, were bent and that they were top bolts. The Motion then completely omits mention that another one of the bolts was also broken, not merely bent. The Secretary’s Motion also makes no mention of the associated imminent danger order.

That leaves for the Court’s review 21 words to assess the legitimacy of the submission: “Respondent asserts that all four bolts supporting the ramp’s handrails would have to break to expose miners to a fall hazard.” The Motion does not say a word about the Secretary’s reaction to the operator’s claim that all four bolts would have to break to create a fall hazard. Nor does the Secretary inform whether he consulted with the Inspector regarding the claim. Even if such a consultation was made, there is no declaration about the likelihood that the bolts would break, nor is there any discussion about the effect of the platform’s leaning state and the impact of that condition increasing the chances of the bolts breaking. When machinery is designed, and four bolts are used for support as here, it can be stated with confidence that the number of bolts used has a functional reason behind it, not an aesthetic one.

Remembering that the Secretary’s default position in his motions is to claim that he need not provide any information to the Commission,<sup>2</sup> other than announcing that the matter has been

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<sup>2</sup> For virtually all its settlements, the Secretary continues to recite that “[i]n reaching this settlement, the Secretary has evaluated the value of the compromise, the likelihood of obtaining a still better settlement, the prospects of coming out better, or worse, after a full trial, and the resources that would need to be expended in the attempt. The Secretary has determined that the public interest and the effective enforcement and deterrent purposes of the Mine Act are best served by settling the citations as indicated above. . . . Consistent with the position the Secretary has taken before the Commission in *The American Coal Company*, LAKE 2011-13, the Secretary believes that the pleadings in this case and the above summary give the Commission an adequate basis for exercising its authority to review and approve the Secretary’s settlement

settled, and his view that the Commission's role is to merely bring out a stamp with the word "approved" on it and apply it to the motion, it is not surprising that he has only reluctantly provided a minimalist and slapdash offering, which misstates the condition and avoids the pertinent context under which the citation was issued. Such motions, involving large reductions, with insufficient explanations, underscore the importance of the Commission's review of settlements, per section 110(k) of the Mine Act. Accordingly, absent a fuller explication, the matter remains set for hearing, commencing December 15th.

Wherefore, the Motion to Approve Settlement Agreement is **DENIED**.

*William B. Moran*  
William B. Moran  
Administrative Law Judge

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under Section 110(k) of the Mine Act, 30 U.S.C. § 820(k).” This is the equivalent of telling the public that there’s “nothing to see here, move along.” Apart from the lack of “transparency,” a term the Secretary often invokes in defending its position that he need not say more by explaining the basis for reductions to miners and to the public generally, there is the matter of the Commission’s role per section 110(k) of the Mine Act.