

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 13, 2022

SECRETARY OF LABOR, UNITED
STATES DEPARTMENT OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION,
Petitioner

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2022-0301
A.C. No. 46-08930-551112

v.

APPALACHIAN RESOURCE WEST
VIRGINIA, LLC,
Respondent

Mine: Grapevine South Surface Mine

ORDER CERTIFYING CASE FOR INTERLOCUTORY REVIEW

This case is before the Court on a Petition for the Assessment of a Civil Penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815(d), filed May 31, 2022, and the Secretary of Labor’s Motion to Approve Settlement, filed October 14, 2022. The Secretary has refused to provide the 104(b) orders associated with seven 104(a) citations in this docket.¹ The absence of the associated 104(b) orders frustrates the Court’s ability to faithfully review the record and properly evaluate the proposed settlement. Further, the idea that the Secretary may unilaterally decide to secrete public records from the official file for a Petition for the Assessment of Civil Penalty he filed, is inimical to the Congressional structure and purpose of the Mine Act.

Accordingly, for the reasons which follow, the Court **CERTIFIES**, under Commission Procedural Rule 76, 29 C.F.R. § 2700.76, that this interlocutory ruling involves a controlling question of law – whether the Secretary is obligated, upon a judge’s request, to supply the 104(b) orders associated with 104(a) citations in a docket before the judge on a Motion to Approve Settlement – for which, in the Court’s opinion, immediate review will materially advance the final disposition of the proceeding.

¹ A separate deficiency, the Court noted that a citation’s termination sheet was also missing from the file. The Secretary did not provide the termination sheet for another citation that did not have an associated 104(b) order. However, Counsel for the Respondent provided the document.

Background

Docket WEVA 2022-0301 originally included 33 citations issued under Section 104(a) of the Mine Act, of which eight citations are listed in Exhibit A as having associated 104(b) Orders. Pet. for a Civil Penalty at 12-13. The docket was subsequently reallocated and thereby split into two dockets. That reallocation created a new docket WEVA 2022-0428.² Seventeen (17) citations remained with WEVA 2022-0301, of which *seven* of those citations had associated 104(b) Orders issued for those now-admitted violations. However, the Petition does not include the seven 104(b) Orders associated with those 104(a) citations.³ Those citations are: Citation Nos. 9563136, 9563137, 9563138, 9563141, 9563142, 9563143, and 9563146.⁴

² Order for Docket Reallocation, June 29, 2022. For the 16 citations exported to the new docket, one of original eight citations which had an associated 104(b) Order was moved to the new docket, WEVA 2022-0428. As that new docket also had the deficiency of a missing section 104(b) order, Citation No. 9563157, which Order the Secretary also refused to provide to the Court, and as that missing Order is within the separate, newly created docket, the Court has today issued a separate Certification for Interlocutory Review for Docket No. WEVA 2022-0428. It is also noteworthy that for the reallocated citations making up the newly created Docket WEVA 2022-0428, eight of the sixteen citations in that docket involved mobile equipment related violations: Citation No. 9563189, pertained to multiple defects on the Volvo fuel and oil service truck, No. 900; Citation No. 9563183 involved a damaged seat belt on the Freightliner Truck No. MT 664; Citation No. 9563174 identified 8 separate defects on 785C Caterpillar haulage truck; Citation No. 9563173 addressed platform steps to access 785D Caterpillar haulage track which were cracked on both sides and had a broken toe board and hand rail to driver's side door; Citation No. 9563172 found multiple defects on D11R Caterpillar Dozer; Citation No. 9563159, involved a defective parking brake on a blasting truck; Citation No. 956156 found the Caterpillar 993 K Front end loader not operating in safe condition with five separate defects identified; and Citation No. 9563155 also identified five separate defects regarding safe means of access to 993K Caterpillar front end loader.

³ That it is undeniable that this mine had a lot of vehicle-related violations is further demonstrated by the fact that among the other nine violations remaining within WEVA 2022-0301 for which no (b) orders were issued, six of them involved an assortment of vehicle defects: Citation No. 9563139 involved other non-functioning lights on the D10R Caterpillar Dozer Co. No. D007; Citation No. 9563145 spoke to the 980 G Caterpillar front-end loader, No. 1893, with multiple defects; Citation No. 9563149 similarly found multiple defects on 992G Caterpillar front-end loader; Citation No. 9563151, identified five separate defects on a fuel and oil truck, No. GT 400; Citation No. 9563153, found horn and reverse lights not functioning; and Citation No. 9563154 discovered an inoperative reverse alarm on 993K Caterpillar front-end loader, No. L465.

⁴ The full texts of the citations for the now-admitted violations missing the associated (b) orders

The conditions found by the issuing inspector are briefly summarized here:

Citation No. 9563136: Haulage truck with defective rear tire and oil leak from a rear inside tire; Citation No. 9563137, another haulage truck with various signal and brake light issues and audible alarm, all not functioning; Citation No. 9563138, five separate defects affecting safety on dozer; Citation No. 9563141, five separate defective lights and non-functioning horn on haulage truck; Citation No. 9563142, 13 thirteen (13) defects affecting safety on haulage truck; Citation No. 9563143, fourteen (14) defects affecting safety on haulage truck; Citation No. 9563146, ten (10) defects affecting safety on haulage truck. Accordingly, it is inarguable that these now-admitted violations reflect that the mine had numerous problems with its mobile equipment.

In light of the missing document(s), on November 9, 2022, the Court e-mailed the parties, requesting the missing information for this docket, as well as the missing information for the reallocated docket, WEVA 2022-0428.

On Tuesday, November 15th, the Secretary's non-attorney representative, conference and litigation representative David Trent, responded, speaking to the missing documents from both dockets:

For the violations listed [by] Judge Moran request[ing] the terminations, no penalty is being compromised except for Citation No. 9563141. Therefore, the Secretary will not provide the terminations for these violations. For Citation No. 9563141 there is no termination to provide for this violation.⁵

E-mail from CLR Trent to the Court, November 15, 2022.

On the same day as Mr. Trent's response, Counsel for the Respondent, Attorney K. Brad Oakley, taking a cooperative approach, emailed the Court, responding that he could only locate a termination sheet for Citation No. 9563139, which termination sheet he attached to his email. He added that the violation was terminated upon repairs being made to lights on a dozer and that there was no (b) order associated with it.

E-mail from Attorney Oakley to the Court, November 15, 2022.

are included in the Appendix to this order.

⁵ Mr. Trent was referring to a citation found in the original docket. Thus, it remained with Docket No. WEVA 2022-0301 and therefore was *not* reallocated to WEVA 2022-0428.

Attorney Oakley also informed in the same email that he had not been able to locate the termination sheets in the package of citations that his client provided to him, nor in the petition filed by Mr. Trent and that he believed that all of the remaining citations have 104(b) orders associated with them. For that reason, he opined that it was possible that MSHA did not issue terminations for the underlying citations. *Id.* Attorney Oakley confirmed, and it is not in dispute, that (b) orders were issued for the following citations in WEVA 2022-0301:

- 9563136 – B order 9563148 issued on 1/13/22 and terminated on 1/19/22
- 9563137 – B order 9563147 issued on 1/13/22 and terminated on 1/19/22
- 9563138 – B order 9563177 issued on 2/1/22 and terminated on 2/3/22
- 9563141 – B order 9563182 issued on 2/1/22 and terminated on 2/8/22
- 9563142 – B order 9563181 issued on 2/1/22 and terminated on 2/8/22
- 9563143 – B order 9563178 issued on 2/1/22 and terminated on 2/10/22
- 9563146 – B order 9563180 issued on 2/1/22 and terminated on 2/2/22
- 9563157⁶ –B order 9563179 issued on 2/1/22 and terminated on 2/10/22

On November 28, 2022, the Court, via email, repeated its request for the Secretary to provide the missing (b) orders for both dockets. E-mail by the Court to the Parties (November 28, 2022). Thereafter, also on November 28, 2022, the CLR responded via e-mail, reiterating that the Secretary would not provide the missing termination sheets.

Analysis

The foregoing problem with the incomplete record in this case may be succinctly summarized. For this docket, Docket No. WEVA 2022-0301, the Secretary refuses to provide the 104(b) orders issued for seven citations. The Court believes that once a matter is before the Commission, per section 110(k), the entire matter is within its domain under the Mine Act. That means that the Secretary may not secrete section 104(b) orders from the view of the Commission, miners or the public. That the citations have been settled, as assessed, without modifications to them, is irrelevant to the Secretary's obligation not to hide orders issued in connection with the admitted violations. This is especially true because, as explained below, 104(b) orders create certain obligations upon the Secretary which he is not free to ignore.

⁶ Citation No. 9563157 represents the lone citation in reallocated Docket No. WEVA 2022-0428 for which a (b) order was issued and for which the Secretary refuses to supply the (b) order paper.

The structure of the Mine Act underscores the importance of 104(b) orders. As the Court noted in its June 22, 2022 Order in *Perry County Resources*, 44 FMSHRC 501 (June 2022),

The Court does not believe that the fact a violation is paid in full, with no modifications made to the issuing inspector's evaluation, is the end of the matter. The principle behind this view is very basic, in carrying out its review responsibilities under 30 U.S.C. §820(k), the Court is obligated to be fully informed about the circumstances surrounding the issuance of a citation or an order. [The Citation in issue] is part of this docket, but the documentary record concerning this admitted violation is incomplete. This is because a section 104(b) order was issued by the inspector in connection with that Citation . . . The Secretary may not decide to selectively secrete such information from the Court, the public and especially from the miners it is charged to protect. From this Court's perspective, such a stance is inimical to the spirit of the Mine Act.

A Section 104(b) order is an important feature of the Mine Act. Section 104(b) of the Mine Act states:

If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) that a violation described in a citation issued pursuant to subsection (a) has not been totally abated within the period of time as originally fixed therein . . . and (2) that the period of time for abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

30 U.S.C. § 814(b).

As the Commission has noted, such orders have significance in their own right. It has observed that:

First of all, section 105(a), by its terms, does not distinguish between the different types of orders that can be issued under section 104. Absent any language in the statute suggesting that the Secretary cannot propose a penalty in connection with a section 104(b) order, we will not interpret the phrase "order under section 104" in section 105(a) to exclude section 104(b) orders.

Secondly, contrary to her claim, the Secretary may indeed assess a separate penalty for the failure to abate a violation. Section 105(b)(1)(A) of the Mine Act provides in pertinent part:

If the Secretary has reason to believe that an operator has failed to correct a violation for which a citation has been issued within the period permitted for its correction, the Secretary shall notify the operator by certified mail of such failure and of the penalty proposed to be assessed under section 110(b) by reason of such failure and that the operator has 30 days within which to notify the Secretary that he wishes to contest the Secretary's notification of the proposed assessment of penalty.... 30 U.S.C. § 815(b)(1)(A). Consequently, section 110(b) of the Act and MSHA's regulations authorize the Secretary to assess steep daily penalties. *See* 30 U.S.C. § 820(b); 30 C.F.R. § 100.5(c) ("Any operator who fails to correct a violation for which a citation has been issued under section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than \$6,500 for each day during which such failure or violation continues.").

Moreover, the fact that a withdrawal order has been issued increases the likelihood that such a penalty will be assessed. The legislative history of the Mine Act states that under section 105(b)(1)(A), like under section 105(a):

[T]he Secretary is to similarly notify operators and miners' representatives when he believes that an operator has failed to abate a violation within the specified abatement period. *In most cases, a failure to abate closure order will have been issued pursuant to Section [104(b)].* The notice of proposed **penalty** to operators in such cases shall state that a **[104(b)] order** has been issued and the **penalty** provided by Section [110(b)] of the Act shall also be proposed. *This penalty shall be proposed in addition to the penalty for the underlying violation required by Section [110(a)] of the Act.* S. Rep. No. 95-181, at 34-35 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 622-23 (1978).

In addition, even if no separate penalty for failure to abate a violation is assessed, the failure to abate allegation upon which a section 104(b) withdrawal order rests, if established, increases the amount of the penalty that is ultimately assessed for the underlying violation. As Judge Zielinski recognized in his first decision, 'the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation is one of the factors that the Commission must consider in fixing the amount of a civil penalty.' 28 FMSHRC at 413 (quoting section 110(i) of the Mine Act, 30 U.S.C. § 820(i)). Thus, the sanction for a failure to abate is not only a withdrawal order, but, likely, a higher penalty when the Secretary eventually assesses a penalty for the original violative condition that allegedly was not abated in a timely fashion. *See NAACO Mining Co.*, 9 FMSHRC 1541, 1545 (Sept. 1987) ('Under sections 104(b) and 110(b), if the operator does not correct the violation within the prescribed period, the more severe sanction of a withdrawal order is required, and a greater civil penalty is assessed.').

UMWA v. Maple Creek Mining, 29 FMSHRC 583, 592-594 (July 2007) (emphases added).

Per the above decision, the Commission recognized the independent importance of 104(b) orders may be the subject of a penalty in their own right, citing section 104(b)(1)(A). The legislative history, as also cited by the Commission, makes this plain: “[t]he notice of proposed **penalty** to operators in such cases shall state that a **[104(b)] order** has been issued and the **penalty** provided by Section [110(b)] of the Act shall also be proposed. *This penalty shall be proposed in addition to the penalty for the underlying violation required by Section [110(a)] of the Act.*” *Id.* at 593. (emphases in original Order).

Though no additional reasons are needed to require disclosure of the (b) order in this matter, the record does not reveal if the Secretary met his obligation to notify the miners’ representatives when, as here, he believed that an operator has failed to abate a violation within the specified abatement period.

This Court is well-aware that its review of settlements is presently cabined within the terms of the Commission’s decisions in *The American Coal Co.*, 40 FMSHRC 983 (Aug. 2018) (“*AmCoal*”) and *Rockwell Mining, LLC*, 40 FMSHRC 994 (Aug. 2018) and that under those decisions the Court’s review role has become statistically perfunctory. However, there is still an obligation and duty to examine *each* citation *and order* within a submitted docket, even if the citation is not contested and paid as originally assessed. The responsibility to ensure that there is *a complete record* is separate and apart from, and not mutually exclusive to, the review of violations that have settled, whether such settlements are for the full amount proposed or some lesser amount.

Frankly, the Court is at a loss to understand why the Secretary of Labor is not in full support of providing the *full record* of the enforcement actions taken in connection with an admitted 104(a) citation. In this matter that involves hiding the inspector’s issuance of a 104(b) order in connection with that citation. The apparent decision to secrete such information from the Court, the public and especially from the miners it is charged to protect is perplexing and at odds with the admonition from several federal courts invoking Justice Louis D. Brandeis’ remark that “Sunlight is said to be the best of disinfectants.” *See, for example, Argus v. U.S. Dept Agriculture*, 740 F.3d 1172 (8th Cir. 2014), wherein Argus invoked the federal law meant to bring disclosure sunlight to the government bureaucracy, in its request to see spending information from the U.S. Department of Agriculture under the Freedom of Information Act, 5 *U.S.C.* § 552. To the same effect as the Secretary has done here, the Department of Agriculture, with little explanation, refused disclosure. Reversing the lower court’s determination that the information sought

was exempt from disclosure, the Eighth Circuit took note of Justice Louis D. Brandeis' remark about the disinfecting benefit of sunlight. *Id.* at 1173, citing *Other People's Money* 92 (1914).

Id. at 503-506 (footnotes omitted).

Conclusion

For all of the above stated reasons, the Court certifies upon its own motion that this interlocutory ruling involves a controlling question of law for which, in the Court's opinion, immediate review will materially advance the final disposition of the proceeding,

William B. Moran

William B. Moran
Administrative Law Judge

APPENDIX

The text of the citations for the now-admitted violations concerning which the Secretary has refused to supply the associated 104(b) orders are presented here.

Citation No. 9563136

Citation No. 9563136 was issued on January 10, 2022, for a violation of 30 C.F.R. § 77.1606(c). Titled “Loading and haulage equipment; inspection and maintenance,” this standard specifies that “[e]quipment defects affecting safety shall be corrected before the equipment is used.” 30 C.F.R. § 77.1606(c).

The citation stated:

The following defects affecting safety existed on the 777D Caterpillar Haulage Truck Co. No. M03-546:

1. A large knot existed on the side wall area of the left rear outside tire.
2. Oil was leaking from the right rear inside wheel area.

This truck was being operated in the Grapevine North Pit Area. Defects affecting safety shall be corrected before the equipment is used.

Standard 77.1606(c) was cited 44 times in two years at mine 4608930 (44 to the operator, 0 to a contractor).

Pet. for a Civil Penalty at 19.

For gravity, likelihood of injury was found to be “unlikely,” and injury could reasonably be expected to result in “lost workdays or restricted duty,” affecting one person. *Id.* The violation was not found to be significant and substantial. *Id.* Negligence was found to be “low.”

Citation No. 9563137

Citation No. 9563137 was issued on January 10, 2022, for a violation of 30 C.F.R. § 77.1605(d). Titled “Loading and haulage equipment,” the standard specifies that “[m]obile equipment shall be provided with audible warning devices. Lights shall be provided on both ends when required.” 30 C.F.R. § 77.1605(d).

The citation stated:

The following conditions existed on the 777D Caterpillar Haulage Truck Co. No. M03-546:

1. Both front marker/signal lights were not functioning when tested.
2. Both rear brake lights were not functioning when tested.
3. The left rear signal light was not functioning when tested.

4. The Level 3 audible warning alarm which is located inside the operators cab was not functioning when tested.

This truck was being operated in the Grapevine North Pit Area. This truck is operated before and after daylight hours. Mobile equipment shall be provided with audible warning devices.

Lights shall be provided on both ends when required

Standard 77.1605(d) was cited 16 times in two years at mine 4608930 (16 to the operator, 0 to a contractor).

Petition at 20.

For gravity, likelihood of injury was found to be “unlikely,” and injury could reasonably be expected to result in “lost workdays or restricted duty,” affecting one person. *Id.* The violation was not found to be significant and substantial. *Id.* Negligence was found to be “low.” *Id.*

Citation No. 9563138

Citation No. 9563138 was issued on January 10, 2022, for a violation of 30 C.F.R. § 77.1606(c), *supra*.

The citation stated:

The following defects affecting safety existed on the D10R Caterpillar Dozer Co. No. D007:

1. A gap existed in the top corner of the right hand door to the operators cab. With the door closed completely the outside of the cab was still visible.
2. Bolts were missing in the floor board allowing the floor board to be loose and not properly sealed.
3. Oil was leaking out the right side final drive.
4. Oil could be seen leaking on the right side out of the frame of the dozer.
5. The seat in the operators cab is bottomed out.

This dozer was being operated in the Grapevine North Pit Area. Defects affecting safety shall be corrected before the equipment is used.

Standard 77.1606(c) was cited 44 times in two years at mine 4608930 (44 to the operator, 0 to a contractor).

Petition at 21.

For gravity, likelihood of injury was found to be “unlikely,” and injury could reasonably be expected to be “permanently disabling,” affecting one person. *Id.* The violation was not found to be significant and substantial. *Id.* Negligence was found to be “low.” *Id.* The citation was

continued on January 13, 2022, with the justification that:

Repairs are still being conducted at this time. Most of the repairs have been completed. The mine operator removed the dozer from service until the repairs could be completed, so more time has been granted.

Id. at 22. The citation was continued again on January 18, 2022, with the justification that:

Repairs are still being conduct at this time. Some of the repairs have been completed. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 23. The citation was continued again on January 24, 2022, with the justification that:

Repairs are still being conduct at this time. The following repairs have been completed 1, 2, 4, and 5. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 24.

Citation No. 9563141

Citation No. 9563141 was issued on January 11, 2022, for a violation of 30 C.F.R. § 77.1605(d), *supra*. The citation stated:

The following conditions existed on the 785D Caterpillar Haulage Truck Co. No. RT111:

1. The left and right side front signal/marker lights are not functioning when tested.
2. The left side high beam light is not functioning when tested.
3. The left and right side rear signal lights are not functioning when tested.
4. The left and right side brake lights are not functioning when tested.
5. The horn was not functioning when tested.

This truck was being operated in the Mill Seat Pit Area (Alma). This truck operates before and after daylight hours. Mobile equipment shall be provided with audible warning devices,

Lights shall be provided on both ends when required. These conditions have been recorded on the Pre-Operational Examinations and reported to the mine operator. Standard 77.1605(d) was cited 18 times in two years at mine 4608930 (18 to the operator, 0 to a contractor).

Petition at 29.

For gravity, likelihood of injury was found to be “unlikely,” and injury could reasonably be expected to be “fatal,” affecting one person. *Id.* The violation was not found to be significant and substantial. *Id.* Negligence was found to be “high.” *Id.* The citation was continued on January 18, 2022, with the justification that:

Repairs are still being conduct at this time. Some of the repairs have been completed. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 30. The citation was continued again on January 24, 2022, with the justification that:

Repairs are still being conduct at this time. Some of the repairs have been completed. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 31.

Citation No. 9563142

Citation No. 9563142 was issued on January 11, 2022, for a violation of 30 C.F.R. §77.1606(c), *supra*.

The citation stated:

The following defects affecting safety existed on the 785D Caterpillar Haulage Truck Co. No. RT111:

1. Right front strut is leaking oil.
2. Right rear strut is leaking oil.
3. Oil is leaking from the right rear inside wheel area.
4. Oil is leaking from the right rear outside wheel area.
5. Oil is leaking from the left rear inside wheel area.
6. Excessive slack existed in the rear stabilizer bar (dogbone).
7. Excessive slack existed in the center arm pin.
8. The left front strut is leaking oil.
9. Oil is leaking from the right front brake caliber area.
10. Oil is leaking excessively from the steering oil tank onto the deck and down onto the right side of the engine compartment area.
11. Oil is leaking excessively from the area located behind the hydraulic tank.
12. Three gussets located on the right side of the truck was cracked and separated.
13. The right rear inside tire has excessive damage to the tire.

This truck was being operated in the Mill Seat Pit Area (Alma). Defects affecting safety shall be corrected before the equipment is used.

Standard 77.1606(c) was cited 46 times in two years at mine 4608930 (46 to the operator, 0 to a contractor).

Petition at 32-33.

For gravity, likelihood of injury was found to be “unlikely,” and injury could reasonably be expected to result in “lost workdays or restricted duty,” affecting one person. *Id.* at 32. The violation was not found to be significant and substantial. *Id.* Negligence was found to be “moderate.” *Id.* The citation was continued on January 18, 2022, with the justification that:

Repairs are still being conduct at this time. Some of the repairs have been completed. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 34. The citation was continued again on January 24, 2022, with the justification that:

Repairs are still being conduct at this time. Some of the repairs have been completed. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 35.

Citation No. 9563143

Citation No. 9563143 was issued on January 11, 2022, for a violation of 30 C.F.R. § 77.1606(c), *supra*.

The citation stated:

The following defects affecting safety existed on the 785C Caterpillar Haulage Truck Co. No. RT269:

1. The mud flap located underneath the operators cab is bent down, allowing mud to get on the drivers side rear view mirror and onto the window glass of the drivers side door.
2. The truck frame is cracked across the bottom and back side of the frame. The crack is located on the rear of the truck above where the stabilizer bar (dogbane) is located.
3. The right rear strut is leaking oil.

4. The right side rear wheel is leaking oil on the inside area of the wheel.
5. The left side rear wheel is leaking oil on the inside area of the wheel.
6. Oil is leaking from the steering oil tank area which is located on the top deck above the engine compartment. The oil is leaking down onto the right side of the engine compartment area.
7. Excessive slack existed in the right side steering jack inside ball stud. The slack is visible when the truck is steered in either direction.
8. Excessive slack existed in the left side steering jack inside ball stud. The slack is visible when the truck is steered in either direction.
9. The front brake canister is over stroked. There is no warning alarm or warning light on inside the operators cab.
10. The handrail located on the front bumper to the right side step is bent and missing a bolt.
11. The hood is broke near the offside door to the operators cab. This hood is also used as a walkway (deck) to access the offside door to the operators cab.
12. The fuel gauge located inside the operators cab was not functioning when tested.
13. Paper towels are wrapped around the door striker to the drivers side door to the operators cab.
14. Paper towels are installed around the top corner to the drivers side door to the operators cab.

This truck was being operated in the Mill Seat Pit Area (Alma). Defects affecting safety shall be corrected before the equipment tis used.

Standard 77.1606(c) was cited 46 times in two years at mine 4608930 (46 to the operator, 0 to a contractor).

Petition at 36-37.

For gravity, likelihood of injury was found to be “unlikely,” and injury could reasonably result in “lost workdays or restricted duty,” affecting one person. *Id.* at 36. The violation was found not to be significant and substantial. *Id.* Negligence was found to be “moderate.” *Id.*

The citation was continued on January 18, 2022, with the justification that:

Repairs are still being conduct at this time. Some of the repairs have been completed. Repair work has been hampere3d by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 38. The citation was continued again on January 24, 2022, with the same justification. *Id.* at 39.

Citation No. 9563146

Citation No. 9563146 was issued on January 12, 2022, for a violation of 30 C.F.R. § 77.1606(c), *supra*.

The citation stated:

The following defects affecting safety existed on the 785D Caterpillar Haulage Truck Co. No. RT112:

1. An excessive oil leak existed on a hose located on the right front area of the truck. Oil was spraying out the hose.
2. An excessive oil leak existed in the area behind the hydraulic tank area. A steady streams of oil was coming from this area.
3. Oil was leaking from the right rear wheel. The inside area of the wheel was covered in oil and running down the sidewall of the tire.
4. The mud flap is missing from underneath the drivers side of the operators cab. The mirror and window glass of the drivers side door was covered in mud.
5. Oil was leaking from the filter area of the steering oil tank and running down onto the right side of the engine compartment.
6. Left rear brake temperature error indicator is coming on inside the operator's cab.
7. The warning light located next to the digital display is taped over.
8. The action warning light located on the dash board is staying on at all times.
9. Excessive slack existed on the right side steering jack inside ball stud. This slack was visible when the truck was steered in either direction.
10. The right side fender is damaged where the front head lights are located causing the lights to not face forwards completely.

This truck was being operated in the Mill Seat Pit Area (Alma). Defects affecting safety shall be corrected before the equipment is used.

Standard 77.1606(c) was cited 48 times in two years at mine 4608930 (48 to the operator, 0 to a contractor).

Petition at 44-45.

For gravity, likelihood of injury was found to be “unlikely,” and injury could reasonably be expected to result in “lost workdays or restricted duty,” affecting one person. *Id.* at 44. The violation was not found to be significant and substantial. *Id.* Negligence was found to be “moderate.” *Id.* The citation was continued on January 18, 2022, with the justification that:

Repairs are still being conduct at this time. Some of the repairs have been completed. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 46. The citation was continued again on January 24, 2022, with the justification that:

Repairs are still being conduct at this time. Repairs to items 1, 2, 4, 6, 7, 9 and 10 have been completed. Repair work has been hampered by parts availability and limited personnel to complete the repairs. The mine operator has removed the equipment from service until these repairs can be completed.

Id. at 47.

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