FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 2, 2022

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner,	:	CIVIL PENALTY PROCEEDING Docket No. WEST 2022-0250 A.C. No. 42-02078-554812
v.	:	
RULON HARPER CONSTRUCTION, INC, Respondent.	:	Mine: Pit 12

ORDER DENYING SETTLEMENT

This case is before me upon a petition for assessment of a civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. The parties have notified the Court that they have reached a settlement agreement in this case. Based on the proposed modifications and significant penalty reduction, I deny the settlement motion. The terms of the proposed settlement are as follows:

Citation/ Order No.	**Originally Proposed Assessment**	**Settlement Amount**	**Modification**
Docket No. WEST 2022-0250			
9479096	$ 3,274.00	$ 662.00	Modify gravity from "Reasonably Likely" to "Unlikely" and modify Significant and Substantial from "Yes" to "No."
9479097	$ 3,274.00	$ 3,274.00	No change.
9479098	$ 296.00	$ 296.00	No change.
9727204	$ 3,274.00	$ 199.00	Modify gravity from "Reasonably Likely" and "Fatal" to "Unlikely" and "Lost Workdays or Restricted Duty," and modify Significant and Substantial from "Yes" to "No."
9727205	$ 3,274.00	$ 662.00	Modify gravity from "Reasonably Likely" to "Unlikely" and modify Significant and Substantial from "Yes" to "No."
9727208	$ 3,274.00	$ 1,472.00	Modify gravity from "Fatal" to "Permanently Disabling."

9727211	$ 3,274.00	$ 0.00	Vacate.
9727212	$ 2,194.00	$ 662.00	Modify gravity from "Fatal" to "Lost Workdays or Restricted Duty."
TOTAL	**$ 22,134.00**	**$ 7,227.00**	

Section 110(k) of the Mine Act provides that "[n]o proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission." 30 U.S.C. § 820(k). This provision of the Act was designed to shed light and scrutiny upon the dealmaking that takes place between mine operators and government regulators, and to ensure that settlements further the public interest and the purposes of the Mine Act. *See Black Beauty Coal Co.*, 34 FMSHRC 1856, 1860-64 (Aug. 2012).

Commission judges review settlements to determine whether they are "fair, reasonable, appropriate under the facts, and protects the public interest." *Am. Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016). To enable judges to make this determination, Commission rules require that a motion to approve a penalty settlement must include "facts in support of the penalty agreed to by the parties." 30 C.F.R. § 2700.31(b). A judge reviews the submitted facts, the six penalty criteria set forth in section 110(i) of the Act, and all other relevant considerations when scrutinizing a settlement. *See Am. Coal Co.*, 38 FMSHRC at 1976, 1982.

I. The Assessed Penalty, Proposed Settlement, and Amendments

The Respondent owns and operates a sand-and-gravel operation at Pit 12 near Salt Lake City, Utah. This docket includes eight citations issued to the Respondent on March 28, 2022. The Respondent contested the citations, and the Secretary filed a petition proposing a penalty of $22,944.00 on July 20, 2022. *See* Pet. for Assess. of Civil Pen. (hereinafter "Pet.").

On September 23, 2022, the Secretary filed his original Motion to Approve Settlement for this docket. In that filing, the Secretary proposed a compromised penalty of $7,227.00, representing a **savings of nearly $15,000.00 for the mine operator** and a **total penalty reduction of 67.3 percent**. The motion also proposed numerous substantive modifications to the text of the citations. The few facts offered in support of the proposed modifications were unconvincing, and I found that they were insufficient to sustain the changes proposed.

Accordingly, the Court notified the parties that their settlement could not be approved as submitted and gave the parties additional time to renegotiate their agreement or provide more information. The Secretary filed an Amended Motion to Approve Settlement on October 3, 2022. The amended motion contains little, if any, additional information supporting the settlement.

II. The Proposed Settlement is not Fair, Reasonable, Appropriate Under the Facts, or Protective of the Public Interest

The Court now turns to the terms of the agreement. The terms are analyzed based on the facts submitted in the settlement motion as amended by the parties. Consideration is given to the monetary and nonmonetary terms of the settlement, and to the criteria established in section 110(i)

of the Mine Act, such as negligence and gravity. On balance, I find that the modified penalty proposed by the Secretary is not fair, reasonable, appropriate under the facts, or protective of the public interest. I find also that the settlement motion does not adequately address the six penalty criteria. I therefore deny the Secretary's motion.

A. The Proposed Modifications to the Berm Citations

During his inspection on March 28, 2022, the mine inspector cited the Respondent for at least **four separate violations of section 56.9300(a)**, which requires that "[b]erms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment." 30 C.F.R. § 56.9300(a).

Citation No. 9479096 alleges a violation as follows:

> The berms on the elevated feed ramp for the crusher were not maintained. The south berm was in a marginal condition but the north berm was almost entirely gone. The ramp was about 100' long and a FEL over traveling the north edge would encounter a drop off of about 6 feet. Miners over traveling the edge would be exposed to fatal blunt force trauma.

Pet. at 6. The inspector determined that the violative condition was reasonably likely to cause an injury, and that the resultant injury could reasonably be expected to be fatal. He marked the citation as moderate negligence and as S&S. The Secretary assessed a penalty of $3,274.00.

Citation No. 9727204 alleges a violation as follows:

> The elevated roadway adjacent to the hole dug by the discharge conveyor on the wash plant was not provided with a berm to prevent equipment from over traveling the edge. The hole is about four feet deep and has a soft perimeter edge. This area is used by the skidsteer and the service truck was parked within a few feet of the edge. Should a vehicle (particularly the skidsteer) over travel this edge and overturn, fatal crushing/blunt force trauma would be the expected result.

Pet. at 12. The mine inspector found that the lack of a berm was reasonably likely to cause injury, and that the injury could reasonably be expected to be fatal. He determined that the violation was S&S and resulted from moderate negligence. The penalty was assessed at $3,274.00.

Citation No. 9727208 alleges a violation as follows:

> The elevated roadway being used for the FEL to access the wash plant feed pile was not provided with berms on both sides of the ramp. The approx. 50' long by 6' high ramp had no berm whatsoever on the south side. There were vehicle tracks trailing off the side of the ramp, indicating that in addition to the FEL, this ramp was used by smaller vehicles. Should a vehicle over travel the edge, fatal blunt force trauma would be the expected injury.

Pet. at 16. The inspector found that the condition was reasonably likely to cause injury, and that the resulting injury could reasonably be expected to be fatal. He designated the citation as S&S and as moderate negligence. The Secretary assessed a penalty of $3,274.00.

> Finally, Citation No. 9727211 alleges a violation as follows:
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> The settling ponds were not provided with berms to protect the equipment accessing the surrounding areas from over traveling the edges and falling into the water. There was tracks crossing a material bridge across the pond and the edges of the roadway had begun to fail. Should a miner over travel the edge, fatal drowning would be the expected result.

Pet. at 18. The mine inspector determined that the lack of a berm was reasonably likely to cause an injury that could reasonably be expected to be fatal. He marked the citation as S&S and as moderate negligence. The Secretary assessed a $3,274.00 penalty for this citation.

The violations alleged here are serious. Accidents involving mobile equipment and powered haulage account for the greatest proportion of fatalities in mines.[1] Many of these accidents are caused by the lack of properly maintained berms. In 2021, at least two miners died as a result of inadequate berms. A miner with 43 years of mine experience was killed while tramming an excavator along an elevated roadway that abutted a dredge pond.[2] Because the mine operator did not provide berms or guardrails on the edge of the roadway, and the excavator rolled over into the pond and the miner sustained fatal injuries. A second miner died when his haul truck overturned at the edge of a dumpsite that featured a deficient berm of inadequate height, width, thickness, and firmness.[3] In 2019, a 22-year-old electrician was killed while working in a trench when a front-end loader toppled over the unguarded edge of the trench and crushed him.[4] In 2017, another fatal accident occurred when a haul truck overturned at a dumpsite that lacked proper berms and barriers.[5] In 2015, a miner sustained fatal injuries when his haul truck went

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[1] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, CY 2021 MSHA FATALITIES, https://www.msha.gov/sites/default/files/events/2021%20MSHA%20Fatalities%206-9-21.pdf.

[2] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: SURFACE (SAND AND GRAVEL) FATAL MACHINERY ACCIDENT – MARCH 5, 2021, https://www.msha.gov/data-reports/fatality-reports/2021/march-5-2021-fatality/final-report.

[3] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: SURFACE (CONSTRUCTION SAND AND GRAVEL) POWERED HAULAGE ACCIDENT – JANUARY 19, 2021, https://www.msha.gov/data-reports/fatality-reports/2021/january-19-2021-fatality/final-report.

[4] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: SURFACE NONMETAL MINE (CRUSHED LIMESTONE) FATAL POWERED HAULAGE ACCIDENT – JUNE 10, 2019, https://www.msha.gov/data-reports/fatality-reports/2019/june-10-2019-fatality/final-report.

[5] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: SURFACE NON METAL MINE (LIMESTONE) POWERED HAULAGE ACCIDENT – JUNE 8, 2017,

over the edge of a bermless road and rolled over into a slough pond.[6] In 2013, a miner with 25 years of experience fell 80 feet to his death when his truck traveled through a hole in the berm and over the edge of a highwall.[7] In 2012, an experienced miner with almost five decades in the industry drowned when the skid steer he was operating traveled over a drop-off and into a water hole.[8] Mine management in that case failed to provide berms in the work area.

Year after year, miners die because operators fail to install and maintain proper barriers. The severity of these accidents could be minimized if operators were to follow the regulations with diligence and care. But operators take their cue from the Secretary, and—time and time again—the Secretary has agreed to settle berm violations like those before me today for mere cents on the dollar.

Once again here, the Secretary sends the message that these violations are not serious. He agrees to vacate one citation, remove the S&S from two others, alter the gravity findings, and reduce the penalties for the four berm violations by 82 percent. It is clear that the MSHA conference and litigation representative (CLR) is not familiar with the current case law describing S&S and has failed to apply the proper legal analysis in this case. I cannot approve a settlement that is contrary to the law.

The Secretary is careless in his attempt to justify the proposed changes. As support for the modifications to the four berm citations, the Secretary offers just five sentences of "facts."[9] Much of the submitted information is irrelevant, uninformative, or unconvincing. For Citation No. 9479096, he says that "feed ramp was straight, visibility was good, and a partial berm was in place" which "would have alerted the loader operator that they were close to the edge of the ramp." Am. Mot. to App. Settlement at 3. For Citation No. 9727204, he submits that the "skid-

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https://www.msha.gov/data-reports/fatality-reports/2017/fatality-4-june-08-2017/final-report.

[6] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: SURFACE NONMETAL MINE (SAND AND GRAVEL) FATAL POWERED HAULAGE ACCIDENT – MARCH 17, 2015, https://www.msha.gov/data-reports/fatality-reports/2015/fatality-5-march-17-2015/final-report.

[7] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: SURFACE NONMETAL MINE (CRUSHED AND BROKEN LIMESTONE) FATAL POWERED HAULAGE ACCIDENT – SEPTEMBER 16, 2013, https://www.msha.gov/data-reports/fatality-reports/2013/fatality-11-september-16-2013/final-report.

[8] MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: SURFACE NONMETAL MINE (CEMENT) FATAL POWERED HAULAGE ACCIDENT – JANUARY 27, 2012, https://www.msha.gov/data-reports/fatality-reports/2012/fatality-1-january-27-2012/final-report.

[9] The Secretary has not submitted any facts in support of the vacatur of Citation No. 9727211. I accept the Secretary's decision to vacate this citation, since he is owed some discretion in his enforcement decisions. I note, however, that this discretion should not be plenary, especially when vacatur occurs as part of a larger settlement. Experience reveals that the Secretary often vacates citations as part of the *quid pro quo* of settlement, and this dealmaking should be subject to judicial review pursuant to section 110(k) of the Mine Act under an "abuse of discretion" standard.

steer in the area was equipped with rollover protection and a seatbelt." He further states that "the alleged drop off was 4 [feet]" and that "[v]ehicles in the area stop at this location and do not continue to travel farther." Am. Mot. to App. Settlement at 4. For Citation No. 9727208, the Secretary justifies the proposed changes by saying that the "front-end loader was outfitted with an enclosed cab with roll over protection and a seatbelt, and the highest overtravel hazard was 6 [feet] above soft earthen material." Am. Mot. to App. Settlement at 4.

These facts cannot support the proposed S&S changes. The Secretary submits that "visibility was good," but the S&S analysis is conducted in the continued course of normal mining operations, and visibility conditions could worsen. *See U.S. Steel Mining Co.*, 7 FMSHRC 1125, 1130 (Aug. 1985). He notes that "a partial berm was in place," but a so-called partial berm described by an inspector as "almost entirely gone" does little to prevent accidents; it also does little to satisfy a standard requiring not just that berms exist, but also that they be maintained. The seatbelts and rollover protection on the mobile equipment are redundant safety features that cannot be considered as part of S&S analysis. *See Cumberland Coal Res., LP v. FMSHRC*, 717 F.3d 1020, 1028-29 (D.C. Cir. 2013).

Meanwhile, the inspector set forth a strong basis for the S&S designations. For Citation No. 9479096, a 100-foot elevated ramp with a 6-foot drop-off was left with an unmaintained and almost nonexistent berm. For Citation No. 9727204, the operator failed to place a berm on an elevated roadway abutting a 4-foot-deep hole with a soft perimeter. Large mobile equipment was parked within feet of the edge. Both alleged violations would be reasonably likely to cause a hazard that could injure a miner. The 4-foot and 6-foot drop-offs suggest that an injury could be reasonably serious, given the heavy equipment that was used on these roads. In my estimation, the Secretary has not presented any concrete information that would mitigate the inspector's well-founded S&S determination.

As additional support for the S&S changes, the Secretary insists that he has "discretion to modify the significant and substantial designation" based on two Commission cases: *American Aggregates of Michigan, Inc*., 42 FMSHRC 570, 576-79 (Aug. 2020), and *Mechanicsville Concrete, Inc*., 18 FMSHRC 877, 879-80 (June 1996). Am. Mot. to App. Settlement at 5. But the Secretary's reliance on these cases is misplaced. The Commission in *Mechanicsville* held that an ALJ may not add an S&S designation on her own initiative, and the Commissioners merely reiterated this holding in *American Aggregates*. By contrast, the present case involves the Secretary's proposal to remove an S&S designation.

These improper and irrelevant case citations misstate the law, and yet they are included in every settlement document filed by a CLR. A CLR is not qualified to analyze or interpret case law. By attempting to do so here, the CLR has proposed a settlement that ignores the meaning of S&S as articulated in *Newtown Energy*, 38 FMSHRC 2033 (Aug. 2016), and its progeny. The present settlement fails to set forth the correct case law and, moreover, fails to provide facts demonstrating that the parties understand the legal requirements and have met those requirements. I cannot approve such a settlement. In sum, I find that the Secretary's claim of discretion regarding S&S is erroneous, and that his decision to remove the S&S designation wrongfully dispenses with decades of history and precedent.

I further find that the penalty reductions associated with Citations Nos. 9479096, 9727204, and 9727208 are inappropriate. The proposed penalties do not reflect the seriousness of the alleged violations and do not adequately deter future violative conduct. Even if the gravity changes are proper, I do not have to accept the proposed penalties and I am not bound by the Secretary's Part 100 determinations. For further discussion of the penalty, see *infra*, Section II.C.

Accordingly, I find that the S&S modifications for Citations Nos. 9479096 and 9727204 are unreasonable and inappropriate under the facts. Similarly, I take issue with the proposed penalties for Citations Nos. 9479096, 9727204, and 9727208 on the same basis. These proposed modifications are therefore denied.

B. The Proposed Modifications to Citation No. 9727205

Citation No. 9727205 alleges a violation of 30 C.F.R. § 56.14101(a)(2) as follows:

> The park brake on the GMC Service truck failed to hold with its typical load on the maximum grade it travels. The test area was an access road to the pit and was selected by the mine. The truck rolled immediately and rapidly when the park brake was tested, it stopped rolling when the service brake was reapplied. This truck is used as needed around the mine site and with miners accessing the back of the truck as a work platform in addition to using the truck to haul maintenance supplies. There is a vice mounted on the back of the truck. Should a miner be struck by the truck due to a non-functional park brake, fatal crushing blunt force trauma would be the expected result. Standard 56.14101(a)(2) was cited 3 times in two years at mine 4202078 (3 to the operator, 0 to a contractor).

Pet. at 14. The cited standard requires that, "[i]f equipped on self-propelled mobile equipment, parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels." 30 C.F.R. § 56.14101(a)(2). The inspector determined that the alleged violation was reasonably likely to cause an injury, and that the resulting injury could reasonably be expected to be fatal. He marked the citation as S&S and as moderate negligence. The Secretary assessed a civil penalty of $3,274.00 for this citation.

Again here, the Secretary proposes major changes. He seeks to modify the likelihood of injury from "Reasonably Likely" to "Unlikely," to delete the S&S designation, and to reduce the penalty down to $662.00. In support of these changes, the Secretary says that "[t]here is no evidence that the truck is used while on grades, and the work areas around the plant are level. The service truck is used for maintenance, travels and parks on level ground, and is not reasonably likely to cause serious injury." Am. Mot. to App. Settlement at 4.

These facts do not mitigate the original S&S finding. Despite the Secretary's claim that work areas at the mine are level, the mine access road selected by the operator itself for the test was on a grade. It is disingenuous to say that the truck was tested on a graded access road and also that no grades exist at the mine. The Secretary does not explain or account for the discrepancy between his facts and the inspector's findings, and I have trouble accepting the Secretary's facts in the absence of any explanation. This type of violation must be treated as

serious. Unfortunately, braking system defects continue to result in fatal accidents in the mining industry.[10] Therefore, without a more convincing explanation, I must deny the proposed S&S changes as unreasonable and inappropriate under the facts.

C. The Proposed Penalty Reduction

The other major issue in the present motion is the penalty reduction. The Secretary proposes a drastic penalty reduction from the assessed penalty of $22,134.00 to the compromised value of $7,227.00. Based on the reasoning below, I find that the proposed penalty reduction is unfair and contrary to the public interest.

Before passage of the Mine Act, mine operators were governed by the Coal Act and its regulations. Operators and regulators negotiated settlements that never saw public scrutiny, and negotiations often led to large penalty reductions for operators. Senator Richard Schweiker (R-Pennsylvania) described the dysfunction:

> [Mine operators] get slapped [with] a fine of $100 or $200 or $300. They accumulate a whole lot of them and go back in court and ultimately settle them at 10 or 20 cents on the dollar… So what you actually assess them at and what they settle for are worlds apart and is part of the frustration of dealing with the act.

123 Cong. Rec. S10,277, *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 1072-73 (1978) ("*Legis. Hist.*"). This system failed to deter hazardous workplace conduct, and devastating mine accidents continued to occur. Members of Congress knew that paltry settlement amounts would not be sufficient incentive for mine operators to adopt safe and compliant practices. As Senator Wendell Ford (D-Kentucky) said:

> The settlement of penalty assessments in the past, often for as little as 30 cents on the dollar, has been a disgrace, as well as a serious obstacle to effective use of the civil penalty mechanism to encourage compliance.

123 Cong. Rec. S10,209, *reprinted in Legis. Hist.*, at 922. There was bipartisan consensus that compromised settlements had become an impediment to ensuring miner safety.

Congress decided to reshape the settlement regime with the Mine Act. Congress identified the compromise of assessed penalties in settlement as a problem with prior legislation, and it crafted section 110(k) of the Mine Act as a solution. By subjecting settlements to judicial review, Congress intended to avoid "the unwarranted lowering of penalties as a result of off-the-record

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[10] *See. e.g.*, MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: FACILITY (COAL) FATAL POWERED HAULAGE ACCIDENT – AUGUST 11, 2021 https://www.msha.gov/data-reports/fatality-reports/2021/august-11-2021-fatality/final-report; MINE SAFETY & HEALTH ADMINISTRATION, U.S. DEP'T OF LABOR, REPORT OF INVESTIGATION: UNDERGROUND (LEAD-ZINC ORE) FATAL POWERED HAULAGE ACCIDENT – FEBRUARY 22, 2021 https://www.msha.gov/data-reports/fatality-reports/2021/february-22-2021-fatality/final-report.

negotiations" and to ensure that "the public interest is adequately protected before approval of any reduction in penalties." S. Rep. No. 95-181, at 45 (1977), *reprinted in Legis. Hist.*, at 633.

It is therefore my duty to review compromised penalties. Motions proposing large penalty reductions—where the operator would pay only "10 or 20" or "30 cents on the dollar"—demand particular attention because they are the very settlements that Congress saw as an obstacle to regulatory compliance. 123 Cong. Rec. S10,277, S10,209, *reprinted in Legis. Hist.*, at 1072-73, 922. The parties must present concrete facts, review the six penalty criteria, and demonstrate how the proposed settlement will be fair and protective of the public interest.

Here, the public interest is not adequately protected. The key public interest to consider in evaluating settlements is whether the proposal encourages compliance with safety regulations. *Black Beauty*, 34 FMSHRC at 1866. I fail to see how this settlement could promote compliance. Instead, by allowing the operator to pay just thirty cents on the dollar for these serious violations, the Secretary encourages the operator to embrace the status quo and accept the minor settlement amounts as the cost of doing business. The Secretary has not submitted any information to dissuade me of this thinking, or to show that a reduced penalty furthers the public interest. Accordingly, I find that the large penalty reduction undermines operator compliance, fails to deter dangerous behavior, and therefore contravenes the public interest.

D. Non-monetary aspects of the settlement

I have also considered the non-monetary aspects of this settlement motion. Just as in all other settlement motions, the Secretary includes the rote recitation that he "has evaluated the enforcement value of the compromise and is maximizing his prosecutorial impact in settling this case on appropriate terms." Am. Mot. to App. Settlement at 3. He says that resolution of this case through settlement is of "significant enforcement value to the Secretary" in part because the citations, as modified, are "preserved for future enforcement actions and are not subject to potential vacatur or further downward adjustment after a hearing." Am. Mot. to App. Settlement at 3. This language is found in every settlement motion filed by a CLR, yet a CLR is not qualified to comment on legal standards and the law regarding settlements. It is hard to imagine that reducing penalties to such a degree has any benefit to future enforcement actions.

I accord significant weight to the value of avoiding litigation and its attendant uncertainty. However, the Secretary's boilerplate statements do little more to help me understand how this particular settlement meets the *AmCoal* standard. Stripping citations of their S&S designations also impacts future enforcement actions, but the Secretary provides no explanation of these specific changes and how they maximize prosecutorial impact.

Furthermore, "[t]he Commission recognized that significant non-monetary value flows from accepting the citations as written." *Solar Sources Mining*, 41 FMSHRC 594, 601 (Sept. 2019) (internal citations omitted). Here, the Secretary has elected to modify six of the eight citations in this docket and forfeit the non-monetary value that would flow from preserving them as written.

Altogether, although there are some non-monetary benefits to this settlement, none of the Secretary's generalized statements convince me that the particular changes proposed here are "fair,

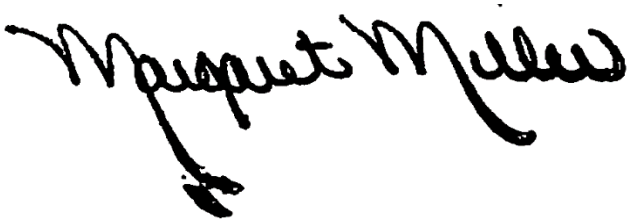
reasonable, appropriate under the facts, and protect[] the public interest." *Am. Coal Co.*, 38 FMSHRC at 1976.

III. Conclusion

The violations alleged in this docket are serious, but the Secretary appears to treat them casually. He proposes substantial modifications to the text of the citations and a penalty reduction of nearly seventy percent. To justify these changes, he submits few facts. The information that was submitted is littered with inconsistencies, irrelevancies, and leaps in logic.

While the Secretary may have taken an indifferent approach in this case, I will not. I take my statutory duty to review settlements seriously. I find that the facts submitted by the Secretary simply cannot hold up to reasonable scrutiny. For the reasons stated above, the proposed settlement is not fair, reasonable, appropriate under the facts, or protective of the public interests. It is therefore denied.

WHEREFORE, the Amended Motion to Approve Settlement is hereby **DENIED**.



Margaret A. Miller
Administrative Law Judge

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