

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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March 20, 2017

STAR MINE OPERATIONS, LLC,  
Contestant

v.

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

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

v.

STAR MINE OPERATIONS, LLC,  
Respondent

**CONTEST PROCEEDING**

Docket No. WEST 2014-592-RM  
Order No. 8754779; 04/01/2014

Revenue Mine  
Mine ID 05-03528

**CIVIL PENALTY PROCEEDINGS**

Docket No. WEST 2014-994-M  
A.C. No. 05-03528-359228-01

Docket No. WEST 2014-995-M  
A.C. No. 05-03528-359228-02

Docket No. WEST 2015-023-M  
A.C. No. 05-03528-360911-01

Docket No. WEST 2015-024-M  
A.C. No. 05-03528-360911-02

Docket No. WEST 2015-025-M  
A.C. No. 05-03528-360911-03

Docket No. WEST 2015-030-M  
A.C. No. 05-03528-361952-01

Docket No. WEST 2015-031-M  
A.C. No. 05-03528-361952-02

Docket No. WEST 2015-037-M  
A.C. No. 05-03528-363546-01

Docket No. WEST 2015-038-M  
A.C. No. 05-03528-363546-02

Docket No. WEST 2015-098-M  
A.C. No. 05-03528-365154

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

v.

RORY WILLIAMS, agent of  
STAR MINE OPERATIONS, LLC,  
Respondent

Docket No. WEST 2015-127-M  
A.C. No. 05-03528-365446-01

Docket No. WEST 2015-128-M  
A.C. No. 05-03528-365446-02

Docket No. WEST 2015-304-M  
A.C. No. 05-03528-369866-01

Docket No. WEST 2015-305-M  
A.C. No. 05-03528-369866-02

Docket No. WEST 2015-306-M  
A.C. No. 05-03528-369866-03

Docket No. WEST 2015-370-M  
A.C. No. 05-03528-372806

Docket No. WEST 2015-440-M  
A.C. No. 05-03528-375046

Docket No. WEST 2015-462-M  
A.C. No. 05-03528-376084

Docket No. WEST 2015-547-M  
A.C. No. 05-03528-378328

Docket No. WEST 2015-596-M  
A.C. No. 05-03528-379026

Docket No. WEST 2015-670-M  
A.C. No. 05-03528-381766

Revenue Mine

CIVIL PENALTY PROCEEDING

Docket No. WEST 2017-093-M  
A.C. No. 05-03528-423306 A

Revenue Mine

**ORDER LIFTING STAY**  
**DECISION APPROVING SETTLEMENT**

Before: Judge Manning

These cases are before the Federal Mine Safety and Health Review Commission (the “Commission”) on one contest case brought by Star Mine Operations, LLC (“Star Mine”), 21 petitions for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration (“MSHA”), against Star Mine pursuant to sections 105 and 110(c) of the Federal Mine Safety and Health Act of 1977, as amended (the “Mine Act”), and one petition for assessment of civil penalty brought by the Secretary against Rory Williams under section 110(c) of the Mine Act. 30 U.S.C. §§ 815 and 820. The parties have filed a Joint Motion to Approve Settlement and Order Payment (“Joint Motion”).

Star Mine began operating the Revenue Mine (the “Mine”), an underground silver mine in Ouray County, Colorado, in 2011. These cases involve 172 citations and orders that were issued by MSHA following two separate accidents at the Mine that were subject to MSHA investigations.

On November 17, 2013, two miners died of carbon monoxide poisoning in an unventilated portion of the Mine. Other miners were taken to a hospital and subsequently released. The deaths occurred when miners entered an area where there had been an exceptionally large detonation of explosives the previous day. The Secretary referred this accident to the United States Attorney for the District of Colorado for a criminal investigation. On August 29, 2014, two miners sustained injuries following a planned underground blast. This second accident was not the subject of a criminal investigation but this settlement includes citations and orders issued following that accident.

The cases before me were stayed pending the completion of a criminal investigation, which has now been completed. The parties have entered into a Plea Agreement resolving all criminal matters arising out of the November 17, 2013 accident. The Plea Agreement was approved by the Honorable Christine M. Arguello of the United States District Court for the District of Colorado on March 16, 2017 in Case No. 16-CR-00350.

Star Mine and other entities with ownership interests in the Mine contracted with Fortune Revenue Silver Mines, Inc. (“Fortune”) to sell to Fortune all the assets related to the operation of the Mine and to transfer operational responsibility to Fortune effective October 1, 2014. Following that effective date, Star Mine and its owners and managers ceased to hold any interest in the Mine.

The parties have proposed a settlement that resolves all matters pending before me. Star Mine has agreed to accept all the citations and orders as written. The parties state that since October 1, 2014, the closing date of the sale to Fortune, Star Mine has not directly or indirectly participated in the mining business in the United States and Star Mine agrees to be permanently barred from the mining business in the United States. Star Mine’s co-owners and managers, Rory Williams and James W. Williams, Jr., agree that they will not, directly or indirectly,

actively participate in or manage, or hold any controlling interest in any mining business or operation in the United States. These two individuals owned the entities that were majority participants in the ownership of Star Mine.<sup>1</sup>

The Plea Agreement is attached as an exhibit to the Joint Motion and is incorporated herein by reference. It contains a section entitled “Stipulation of Factual Basis and Facts Relevant for Sentencing” at pages 5-12. This section summarizes the facts agreed upon by the parties with respect to the November 2013 fatal accident. In the Plea Agreement, Star Mine agrees to plead guilty to felony Count One of the criminal information that charged a violation of section 110(f) of the Mine Act for making false statements, representations, or certifications. 30 U.S.C. § 820(f). These false statements, representations or certifications relate to information Star Mine provided to MSHA with respect to the ventilation provided in certain areas of the Mine. The parties to the Plea Agreement recommended a sentence of probation for a period of up to five years, restitution in the amount of \$1,333,000 to the surviving families of the deceased miners, and a small fine. The Plea Agreement also asks the court to consider the settled penalty amount to be paid in the cases before me to “satisfy the requirement of a fine in [the criminal] case.” (Plea Agreement at 14). As stated above, District Court Judge Arguello approved the Plea.

The parties are proposing a substantial reduction in the total civil penalty to be assessed against Star Mine. The proposed penalty was \$2,010,614 and the proposed amended penalty is \$300,000, which is about an 85% reduction. The \$10,000 penalty proposed against Rory Williams is not being reduced. The breakdown of the amended penalties is set forth in a table attached to this decision approving settlement. The parties state that given the terms of the settlement, “the deterrent purpose of the Mine Act is no longer served by imposing penalties greater than the agreed-upon amount on an insolvent operator that will no longer participate in the mining business and where the above-referenced criminal sanctions have been imposed.” (Draft Decision Approving Settlement prepared by counsel for the Secretary at paragraph 5).

The sentencing recommendations made by the parties to the District Court in the Plea Agreement took into consideration the guidelines issued by the United States Sentencing Commission. Pursuant to those guidelines, the parties state that “the payment of an additional amount in fine may not be appropriate in [the criminal] case as that could interfere with the Defendant’s ability to pay restitution” to the families of the deceased miners. (Plea Agreement at 14). It is clear that the parties in the criminal proceeding considered restitution to the families of the deceased miners to be a principal element of the sentence. Whether there would be sufficient funds for restitution once a civil penalty is paid is not one of the elements in section 110(i) of the Mine Act, but I find that it is a factor that should be considered by me in assessing civil penalties in these cases. Although a Commission judge is “bounded by consideration of the statutory criteria” when assessing a penalty he is also permitted to factor in the “deterrent purpose underlying the Act’s penalty scheme.” *Sellersburg Stone Co.*, 5 FMSHRC 287, 294 (Mar. 1983), *aff’d*, 736 F.2d 1147, 1152 (7th Cir. 1984). In this instance, the mine operator is no longer in

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<sup>1</sup> At all relevant times, Star Mine was owned by Silver Star Resources, LLC (“SSR”) (100% owned by the Williams’), Revenue-Virginus Mines (“RVM”) (98% owned by the Williams’ and the remainder 2% owned by three individuals), and Yankee Boy Resources, LLC (“YBR”) (owned by another individual). SSR and RVM jointly owned 98% of Star Mine.

business and the operator and its principals are barred from reentering the mining business. Higher penalties would not serve a deterrent purpose and could well “increase the burden on the victims of the offense.” (Plea Agreement at 14).

I have considered the representations and documentation submitted and I conclude that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Act. In accepting the penalty reduction, I have taken into consideration the following factors.

1. Ability to Continue in Business – Star Mine provided the Secretary with information regarding its financial condition before and after the two accidents, including information relating to the asset sale to Fortune. This information shows that Star Mine is insolvent because it has no assets and all proceeds from the sale of the Mine were reserved to pay creditors. There is no evidence to show that it discontinued business operations to avoid paying the proposed civil penalties. Since the sale to Fortune, Star Mine and its managers Rory Williams and James W. Williams, Jr., have not participated in the mining business and agree that they will be permanently barred from participating in the mining business in the United States. “[T]he purpose of a civil penalty is to induce those officials responsible for the operation of a mine to comply with the Act and its standards.” S. Rep. No. 95-181 at 41, *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 629 (1978). Given the above, I find that the amended penalty proposed by the parties will not affect Star Mine’s ability to continue in business.

2. History of Previous Violations – The citations and orders in these cases were issued between November 2013 and October 2014 for conditions that arose between November 17, 2013 and August 29, 2014. Star Mine was issued 17 section 104(a) citations during the 15 months prior to November 17, 2013, based on information at MSHA’s Mine Data Retrieval System on its website. The history of previous violations for citations and orders issued after that date would include the previously issued citations listed in the table.

3. Size of the Mine Operator – In calendar years 2013-14, Star Mine employed about 95 miners and worked just over 200,000 hours each year based on information at MSHA’s Mine Data Retrieval System on its website. MSHA’s penalty point system assigned the Mine 7 points out of 15 for the size of the mine and 3 points out of 9 for the size of the controlling entity. The mine was mid-sized.

4. Negligence - The negligence attributable to Star Mine for each violation is set forth in the citations and orders at issue.

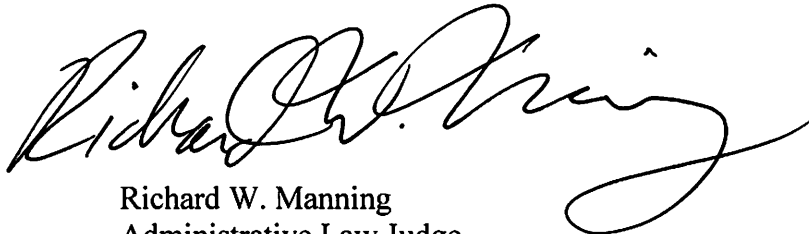
5. Gravity – The gravity of each violation is set forth in the citations and orders at issue.

6. Good Faith – The parties agree that all the violations were timely abated in good faith.

Star Mine has agreed to withdraw its contest of Imminent Danger Order No. 8754779 in Docket No. WEST 2014-592-RM. As a consequence, that docket is dismissed.

## **ORDER**

I have considered the representations and documentation submitted and I conclude that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Mine Act. The stay entered in the cases involving Star Mine is **LIFTED**, the Joint Motion to Approve Settlement and Order Payment is **GRANTED**, Star Mine Operations, LLC, is **ORDERED TO PAY** the Secretary of Labor the sum of **\$300,000** within 40 days of the date of this order, and Rory Williams is **ORDERED TO PAY** the Secretary of Labor the sum of **\$10,000** within 40 days of the date of this order. Docket No. WEST 2014-592-RM is **DISMISSED**.



Richard W. Manning  
Administrative Law Judge

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RWM

**TABLE SETTING FORTH SETTLED CITATIONS  
STAR MINE OPERATIONS  
DOCKET NOS. WEST 2014-994-M et. al.**

<b>Citation/Order</b>	<b>Modification to Citation/Order</b>	<b>Proposed Penalty</b>	<b>Amended Penalty</b>
<b>WEST 2014-994-M</b>			
8769616	Penalty reduction	\$51,900	\$2,000
<b>WEST 2014-995-M</b>			
8769617		\$5,000	\$5,000
<b>WEST 2015-023-M</b>			
92 Citations		\$25,664	\$25,664
<b>WEST 2015-024-M</b>			
6582222	Penalty reduction	\$5,645	\$4,000
8754780		\$4,000	\$4,000
8754781		\$4,000	\$4,000
8754788		\$4,000	\$4,000
8761624		\$4,000	\$4,000
<b>WEST 2015-025-M</b>			
8769605	Penalty reduction	\$112	\$100
<b>WEST 2015-030-M</b>			
8769586		\$2,000	\$2,000
8792289	Penalty reduction	\$6,624	\$2,000
8769600		\$2,000	\$2,000
<b>WEST 2015-031-M</b>			
8769574	Penalty reduction	\$207	\$100
8769577	Penalty reduction	\$207	\$100
<b>WEST 2015-037-M</b>			
8792285		\$100	\$100

<b>WEST 2015-038-M</b>			
8769568		\$2,000	\$2,000
8769569		\$2,000	\$2,000
8792278	Penalty reduction	\$6,624	\$2,000
8792275		\$2,000	\$2,000
8792277	Penalty reduction	\$6,624	\$2,000
8792281		\$2,000	\$2,000
8792282		\$2,000	\$2,000
8769588		\$2,000	\$2,000
8756393		\$2,000	\$2,000
8792292	Penalty reduction	\$6,624	\$2,000
8769602		\$2,000	\$2,000
8769603		\$2,000	\$2,000
8757031	Penalty reduction	\$5,645	\$2,000
<b>WEST 2015-098-M</b>			
8769606	Penalty reduction	\$156,300	\$16,175
8769607	Penalty reduction	\$156,300	\$16,175
8769608	Penalty reduction	\$156,300	\$16,175
8769609	Penalty reduction	\$70,000	\$7,243
8769610	Penalty reduction	\$156,300	\$16,175
8769611	Penalty reduction	\$70,000	\$7,243
8769613	Penalty reduction	\$156,300	\$16,175
8769614	Penalty reduction	\$156,300	\$16,175
<b>WEST 2015-127-M</b>			
8769566	Penalty reduction	\$6,600	\$2,000
8769567	Penalty reduction	\$7,700	\$2,000
8769575	Penalty reduction	\$7,700	\$2,000
8769597	Penalty reduction	\$7,700	\$2,000
8769581	Penalty reduction	\$7,700	\$2,000
8769582	Penalty reduction	\$7,700	\$2,000
8769593	Penalty reduction	\$8,400	\$2,000
8756382	Penalty reduction	\$7,700	\$2,000
8769592	Penalty reduction	\$12,500	\$2,000
8756392	Penalty reduction	\$9,100	\$2,000
8792294	Penalty reduction	\$32,800	\$2,000
8757027	Penalty reduction	\$7,700	\$2,000
8757029	Penalty reduction	\$27,900	\$2,000
8757030	Penalty reduction	\$27,900	\$2,000
8757032	Penalty reduction	\$27,900	\$2,000



8757033	Penalty reduction	\$27,900	\$2,000
<b>WEST 2015-128-M</b>			
8769565	Penalty reduction	\$3,000	\$100
8761663	Penalty reduction	\$20,000	\$5,000
<b>WEST 2015-304-M</b>			
8757026	Penalty reduction	\$1,842	\$100
8769599	Penalty reduction	\$6,624	\$100
<b>WEST 2015-305-M</b>			
8756373		\$2,000	\$2,000
8756375		\$2,000	\$2,000
8792276		\$2,000	\$2,000
8792279	Penalty reduction	\$6,624	\$2,000
8792280		\$2,000	\$2,000
8769587	Penalty reduction	\$5,645	\$2,000
8756383		\$2,000	\$2,000
8756385		\$2,000	\$2,000
8792290	Penalty reduction	\$6,624	\$2,000
8792293	Penalty reduction	\$6,624	\$2,000
<b>WEST 2015-306-M</b>			
8761658		\$4,000	\$4,000
<b>WEST 2015-370-M</b>			
8756380	Penalty reduction	\$25,800	\$2,000
8769585	Penalty reduction	\$30,200	\$2,000
<b>WEST 2015-440-M</b>			
8754775		\$4,000	\$4,000
8754776		\$4,000	\$4,000
8754778		\$4,000	\$4,000
<b>WEST 2015-462-M</b>			
8769615	Penalty reduction	\$70,000	\$2,000

<b>WEST 2015-547-M</b>			
8761659	Penalty reduction	\$15,971	\$4,000
8761660	Penalty reduction	\$15,971	\$4,000
8761664	Penalty reduction	\$15,971	\$100
8761665	Penalty reduction	\$15,971	\$4,000
<b>WEST 2015-596-M</b>			
8761661	Penalty reduction	\$15,971	\$4,000
<b>WEST 2015-670-M</b>			
8761657	Penalty reduction	\$125,400	\$4,000
8761662	Penalty reduction	\$122,700	\$4,000
<b>WEST 2017-093-M</b>			
8769608 Rory Williams	§ 110(c) violation	\$10,000	\$10,000
<b>TOTAL SETTLEMENT AMOUNT</b>			<b>\$310,000</b>