

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004

June 5, 2017

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

v.

BIG RIDGE, INC.,
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. LAKE 2009-57
A.C. No. 11-03054-163984

Mine: Willow Lake Portal

DECISION ON REMAND
AND
ORDER TO PAY

Before: Judge Feldman

This remand matter concerns a Decision by Judge Melick vacating Citation No. 6674618 in Docket No. LAKE 2009-57. 33 FMSHC 2238, 2250 (Sept. 2011) (ALJ). Judge Melick has since retired. Judge Melick concluded that the underlying safeguard at issue in Citation No. 6674618 was invalid because it failed to provide the mine operator with adequate notice of the hazard addressed by the safeguard concerning the transportation of men and/or materials. *Id.*

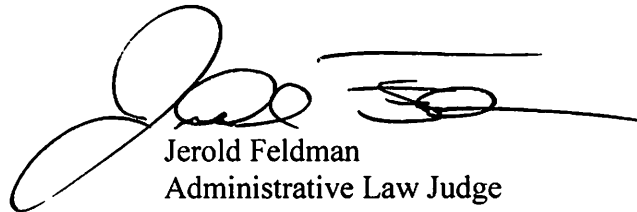
On appeal, the Commission reinstated the subject safeguard, holding that it provided the mine operator with adequate notice of the condition covered and the conduct required to satisfy the underlying notice of safeguard. 37 FMSHRC 213, 216 (Feb. 2015). Consequently, the Commission remanded this matter for assessment of the appropriate civil penalty.¹ *Id.* at 217. Action on the Commission's remand was delayed due to administrative error. This matter was assigned to me on May 2, 2017, for disposition of the Commission's remand.

¹ The caption in the Commission's remand also concerned Docket Nos. LAKE 2008-436, LAKE 2009-58, LAKE 2009-59, and LAKE 2009-378. With the exception of Citation No. 6674618 in Docket No. LAKE 2009-57, for which the parties have not agreed upon payment of a \$1,795.00 civil penalty, Judge Melick ordered that Big Ridge pay a total civil penalty of \$272,961.00 in satisfaction of the all other citations/orders in these five dockets. Big Ridge has timely paid the \$272,961.00 civil penalty.

On May 22, 2017, the parties filed a Motion to Approve Penalty that reflects that Big Ridge has agreed to withdraw its contest of Citation No. 6674618, and pay the Secretary's proposed penalty of \$1,795.00 in full. Having considered the representations and documentation submitted in this matter, I conclude that the proffered motion to order payment is appropriate under the criteria set forth in section 110(i) of the Mine Act.

ORDER

Accordingly, **IT IS ORDERED** that Big Ridge, Inc. pay the proposed \$1,795.00 civil penalty within 40 days of the date of this Order in satisfaction of the safeguard at issue in Citation No. 6674618.² Upon receipt of timely payment, the captioned civil penalty proceeding in Docket No. LAKE 2009-57 **IS DISMISSED**.



Jerold Feldman
Administrative Law Judge

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/acp

² Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390. Please include the Docket No. and A.C. No. noted in the above caption on the check.