

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

December 12, 2022

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	Docket No. WEST 2022-0189
ADMINISTRATION (MSHA)	:	A.C. No. 48-00152-548001
	:	
	:	Docket No. WEST 2022-0267
v.	:	A.C. No. 48-00152-550854
	:	
	:	Docket No. WEST 2022-0268
GENESIS ALKALI, LLC	:	A.C. No. 48-00152-550854

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018). On November 17, 2022, a Commission Administrative Law Judge issued two orders certifying for interlocutory review her denial of the Secretary of Labor’s amended motions to approve settlement in the captioned proceedings. On November 29, 2022, the parties submitted further amended motions to approve settlement.¹ On December 7, 2022, the Judge issued an order denying those motions and certifying her denial for interlocutory review. *See* 29 C.F.R. § 2700.76(a)(1)(i).

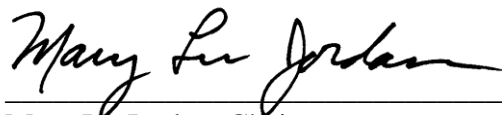
The Judge denied the November 29, 2022, settlement motions because she concluded that the submitted facts could not support a finding that the settlement terms were fair, reasonable, appropriate under the facts, or protective of the public interest. *See Am. Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016). Regarding Docket No. WEST 2022-0189, the Judge particularly noted the Secretary’s failure to account for the seriousness of a violation or justify deletion of a significant and substantial designation. Regarding Docket Nos. WEST 2022-0267 and WEST 2022-0268, the Judge noted that the parties provided no factual support in moving to preserve several citations and vacate the rest, and found that the Secretary had abused his authority to vacate citations.

¹ The Secretary of Labor submitted an amended motion to approve settlement for Docket No. WEST 2022-0189. As for Docket Nos. WEST 2022-0267 and WEST 2022-0268, the parties submitted a joint “Stipulation of Dismissal” in which Genesis Alkali stated it was withdrawing its contest of seven citations and the Secretary stated he was vacating the remaining eighteen citations. The Judge interpreted this filing as an amended motion to approve settlement.

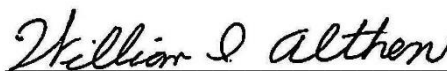
Commission Procedural Rule 76(a) provides that interlocutory review is a matter of sound discretion of the Commission, and that the Commission may grant interlocutory review upon a determination that the Judge's interlocutory ruling involves a controlling question of law and immediate review will materially advance the final disposition of the proceeding. 29 C.F.R. § 2700.76(a).

In light of the parties' subsequent filings, the Judge's November 17, 2022, certifications for interlocutory review are moot.

Upon consideration by the Commission, the Judge's December 7, 2022, certification for interlocutory review is accepted. The Commission hereby grants interlocutory review on the issue of whether the Judge abused her discretion in denying the November 29, 2022, motions to approve settlement. The Secretary shall file an opening brief with the Commission within 30 days of this order. If the operator wishes to file a brief, it shall file that brief 30 days after the filing of the Secretary's brief.



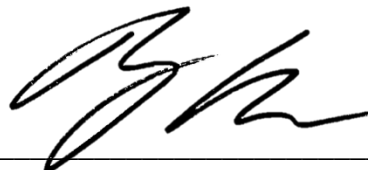
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William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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