

CCASE:
IN RE: CONTESTS OF RESPIRABLE
DUST SAMPLE ALTERATION
CITATIONS

DDATE:
19920812
TTEXT:

~1382

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

IN RE: CONTESTS OF RESPIRABLE
DUST SAMPLE ALTERATION
CITATIONS

Master Docket No. 91-1

BIG BOTTOM COAL CO., INC.,
CONTESTANT

CONTEST PROCEEDINGS

v.

Docket Nos. KENT 91-501-R
and KENT 91-502-R

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

Citation Nos. 9858986
and 9858987
Issued April 4, 1991

No. 1 Mine
Mine ID 15-12610

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

CIVIL PENALTY PROCEEDING

v.

Docket No. KENT 91-1134
A.C. No. 15-12618-03575D

No. 1 Mine a/k/a Big Bottom

BIG BOTTOM COAL CO., INC.,
A/K/A RAWL SALES AND
PROCESSING COMPANY,
RESPONDENT

BIG BOTTOM COAL CO., INC.,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket Nos. KENT 91-1017-R
and KENT 91-1018-R

Citation Nos. 9862923
and 9862924
Issued June 7, 1991

No. 1 Mine
Mine ID 15-12618

~1383

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

v.

BIG BOTTOM COAL CO., INC.,
A/K/A RAWL SALES AND
PROCESSING COMPANY,
RESPONDENT

TALL TIMBER COAL CO., INC.,
CONTESTANT

v.

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

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

v.

RAWL SALES AND PROCESSING CO.,
A/K/A TALL TIMBER COAL CO.,
RESPONDENT

MARTIN COUNTY COAL CORPORATION,
CONTESTANT

v.

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

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

v.

MARTIN COUNTY COAL CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 92-126
A.C. No. 15-12618-03579D

No. 1 Mine a/k/a Big Bottom

CONTEST PROCEEDING

Docket No.,. KENT 91-668-R
Citation No. 9859055; 4/4/91

Mine No. 1
Mine ID 15-13720

CIVIL PENALTY PROCEEDING

Docket No. 91-1135
A.C. No. 15-13720-03573D

Tall Timber a/k/a No. 1 Mine

CONTEST PROCEEDINGS

Docket Nos. KENT 91-482-R
through KENT 91-484-R

Citation Nos. 9859067
through 9859069
Issued April 4, 1991

Black Bear Mine
Mine ID 15-13946

CIVIL PENALTY PROCEEDING

Docket No. KENT 91-1095
A.C. No. 15-13946-03534D

Black Bear Mine

~1384

MARTIN COUNTY COAL CORPORATION,
CONTESTANT

v.

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

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

v.

MARTIN COUNTY COAL CORPORATION,
RESPONDENT

MARTIN COUNTY COAL CORPORATION,
CONTESTANT

v.

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

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

v.

MARTIN COUNTY COAL CORPORATION,
RESPONDENT

MARTIN COUNTY COAL CORPORATION,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket Nos. KENT 91-485-R
Citation No. 9859295; 4/4/91

Wildcat No. 3 Mine
Mine ID 15-15940

CIVIL PENALTY PROCEEDING

Docket No. KENT 91-1097
A.C. No. 15-15940-03507D

Wildcat No. 3 Mine

CONTEST PROCEEDINGS

Docket Nos. KENT 91-493-R
and KENT 91-494-R

Citation Nos. 9858712
and 9858713
Issued April 4, 1991

Preparation Plant Mine
Mine ID 15-05106

CIVIL PENALTY PROCEEDING

Docket No. KENT 91-1094
A.C. No. 15-05106-03525D

Preparation Plant Mine

CONTEST PROCEEDINGS

Docket Nos. KENT 91-488-R
through KENT 91-492-R

Citation Nos. 9859602
through 9859606
Issued April 4, 1991

~1385

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

v.

MARTIN COUNTY COAL CORPORATION,
RESPONDENT

MARTIN COUNTY COAL CORPORATION,
CONTESTANT

v.

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

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

v.

MARTIN COUNTY COAL CORPORATION,
RESPONDENT

MARTIN COUNTY COAL CORPORATION,
CONTESTANT

v.

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

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

v.

Bobcat No. 2 Mine
Mine ID 15-16652

CIVIL PENALTY PROCEEDING

Docket No. KENT 91-1099
A.C. No. 15-16652-03502D

Bobcat No. 3 Mine

CONTEST PROCEEDINGS

Docket Nos. KENT 91-486-R
and KENT 91-487-R

Citation Nos. 9859559
and 9859560
Issued April 4, 1991

Red Fox No. 3 Mine
Mine ID 15-16574

CIVIL PENALTY PROCEEDING

Docket No. KENT 91-1098
A.C. No. 15-16574-03505D

Red Fox No. 3 Mine

CONTEST PROCEEDINGS

Docket Nos. KENT 91-472-R
through KENT 91-481-R

Citation Nos. 9859213
through 9859222
Issued April 4, 1991

Black Diamond Mine
Mine ID 15-15623

CIVIL PENALTY PROCEEDING

Docket No. KENT 91-1096
A.C. No. 15-15623-03508D

~1386

MARTIN COUNTY COAL CORPORATION, RESPONDENT	Black Diamond Mine
MARTIN COUNTY COAL CORPORATION, CONTESTANT	CONTEST PROCEEDINGS
v.	Docket Nos. KENT 91-495-R through KENT 91-500-R
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Citation Nos. 9858669 through 9858674 Issued April 4, 1991
	No. 1-C Mine Mine ID 15-03752
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	CIVIL PENALTY PROCEEDING
v.	Docket No. KENT 91-1093 A.C. No. 15-03752-03557D
	No. 1-C Mine
MARTIN COUNTY COAL CORPORATION, RESPONDENT	
MARTIN COUNTY COAL CORPORATION, CONTESTANT	CONTEST PROCEEDINGS
v.	Docket Nos. KENT 91-1019-R Citation No. 9862930; 6/7/91
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Red Fox No. 4 Mine Mine ID 15-16691
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	CIVIL PENALTY PROCEEDING
v.	Docket No. KENT 92-127 A.C. No. 15-16691-03503D
	Red Fox No. 4 Mine
MARTIN COUNTY COAL CORPORATION, RESPONDENT	

DECISION APPROVING SETTLEMENT
ORDER OF DISMISSAL

Before: Judge Broderick

On July 29, 1992, the Secretary filed a Motion to Approve Settlement between the parties in the above cases. The cases

~1387

include 35 citations variously assessed at \$1100, \$1200, \$1300 and \$1400 for alleged violations of 30 C.F.R. 70.209(b). The Secretary continues to assert that the violations resulted from a deliberate act and has offered evidence to support this assertion. The operators continue to assert that they did not tamper with or alter any of their dust filter media, and have offered evidence to show that dust dislodgement on samples may result from accidental causes. In order to resolve these matters the parties have agreed to propose this settlement. The penalties originally assessed totalled \$46,100. The parties agree to a settlement reducing the total penalties to \$39,185, a 15 percent reduction in the penalty for each alleged violation.

The operators represent that they have made good faith efforts to investigate and address conditions in their dust sampling programs which may cause or contribute to dust dislodgement from samples. The operators further have submitted a written program attesting to their commitment to the integrity of their respirable dust programs.

I have considered the motion in the light of the criteria in section 110(i) of the Act and conclude that it should be approved.

Accordingly, the settlement motion is APPROVED. The operators are ORDERED to pay within 30 days of the date of this decision the sum of \$39,185. for the violations charged in these proceedings.

IT IS FURTHER ORDERED that the above contest proceedings are DISMISSED.

James A. Broderick
Administrative Law Judge