

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 16, 2016

THE DOE RUN COMPANY,

Contestant,

v.

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

Respondent.

CONTEST PROCEEDINGS

Docket No. CENT 2016-279-RM
Citation No. 8626619; 03/17/2016

Sweetwater Mine/Mill
Mine ID 23-00458

Docket No. CENT 2016-280-RM
Citation No. 8626620; 03/17/2016

Viburnum #29 Mine
Mine ID 23-00495

Docket No. CENT 2016-281-RM
Citation No. 8626621; 03/17/2016

Brushy Creek Mine/Mill
Mine ID 23-00499

Docket No. CENT 2016-282-RM
Citation No. 8626622; 03/17/2016

Fletcher Mine/Mill
Mine ID 23-00409

Docket No. CENT 2016-283-RM
Citation No. 8626623; 03/17/2016

Viburnum #35 (Casteel Mine)
Mine ID 23-01800

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

Petitioner,

v.

THE DOE RUN COMPANY,

Respondent.

CIVIL PENALTY PROCEEDINGS

Docket No. CENT 2016-392
A.C. No. 23-00409-408952

Mine: Fletcher Mine and Mill

Docket No. CENT 2016-393
A.C. No. 23-00458-408953

Mine: Sweetwater Mine/Mill

Docket No. CENT 2016-394
A.C. No. 23-00495-408954

Mine: Viburnum #29 Mine

Docket No. CENT 2016-395
A.C. No. 23-00499-408955

Mine: Brushy Creek Mine/Mill

Docket No. CENT 2016-396
A.C. No. 23-01800-408957

Mine: Viburnum #35 (Casteel Mine)

DECISION APPROVING SETTLEMENT
ORDER TO DISMISS

Before: Judge Simonton

These dockets are before me upon The Doe Run Resources Corporation's ("The Doe Run Company" or "Doe Run") notices of contest and the Secretary's petitions for assessment of civil penalty issued in accordance with the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* ("Mine Act") and 29 C.F.R. § 2700.50 *et seq.* The Parties have filed a Joint Motion to Approve Settlement and Dismiss Proceeding, as well as a formal Agreement with Figures 1-8 appended thereto (the "Agreement").

On March 17, 2016, MSHA issued Citation Nos. 8626619, 8626620, 8626621, 8626622 and 8626623 to multiple Doe Run mines alleging violations of 30 C.F.R. § 57.11050(a) on the basis that two escapeways were not provided to the surface from all working areas. Doe Run timely contested the issuance of each citation pursuant to 29 C.F.R. § 2700.20. Doe Run further contested the proposed penalty assessments to the aforementioned citations pursuant to 29 C.F.R. § 2700.26. On August 19, 2016, I granted the Secretary's Unopposed Motion to Consolidate and

Stay Civil Penalty Proceedings which consolidated the Contest cases with the Civil Penalty cases and stayed the Civil Penalty cases pending a final resolution of the Contest cases.

Doe Run maintains that 30 C.F.R. § 57.11050(a) limits the two escapeway requirement to the lowest levels of the mine rather than all working areas. MSHA disagrees. Beginning on June 20, 2016, a four (4) day trial on the merits was held before me in St. Louis, Missouri. Recognizing, however, the risks associated with an adverse ruling against either Party, as well as facts and circumstances specific to the Doe Run mines and Department of Labor's administration of the Mine Act at these mines, the Parties engaged in significant settlement discussions following the trial which resulted in a comprehensive settlement agreement. As set forth in the Agreement, in consideration of MSHA voluntarily vacating Citation Nos. 8626619, 8626620, 8626621, 8626622 and 8626623, Doe Run will, among other things, locate and install Refuge Chambers and designated points of safety ("DPOS") in single access areas as specified in the Agreement.

The Commission has made clear that "[s]ettlement of contested issues is an integral part of dispute resolution under the Mine Act." *Hickory Coal Co.*, 16 FMSHRC 226 (Rev. Comm. February 1994). A settlement agreement is a form of contract; therefore, basic principles of contract law govern the existence and enforcement of such agreements. *Chaganti & Assocs., P.C. v. Nowotny*, 470 F.3d 1215, 1221 (8th Cir. 2006); *MLF Realty L.P. v. Rochester Ass'n*, 92 F.3d 752, 756 (8th Cir. 1996). To establish a contract with the United States, as is the case here, the party seeking to enforce the contract must demonstrate a mutual intent to contract, including an offer, an acceptance, and consideration, as well as a showing that the government representative had actual authority to bind the United States. *Compliance Sols. Occupational Trainers, Inc. v. United States*, 118 Fed. Cl. 402 (2014); *Anderson v. United States*, 344 F.3d 1343, 1353 (Fed. Cr. 2003).

After thoroughly reviewing the Agreement, it is clear to me that the Agreement is the product of extensive negotiation over a number of months between the Parties. It is further evident that the terms of the Agreement were negotiated and approved by Neal H. Merrifield, Administrator for Metal and Nonmetal Safety and Health, and Steve Batts, Vice-President Southeast Missouri Operations, both of whom have the authority to enter into the Agreement on behalf of MSHA and Doe Run, respectively. It is unmistakable that the Parties intend for the Agreement to be legally binding upon and shall inure to the benefit of each of them and their respective successors and assigns. In sum, I find that the Parties' Agreement contains all of the necessary elements of an enforceable contract, including mutual intent, offer, acceptance, consideration, and authority to bind.

It is also evident that the Agreement is designed (1) to resolve the current litigation and (2) absent future rulemaking modifying relevant miner escape provisions in Subpart J of 30 CFR Part 57, to provide a defined and enforceable means of compliance with the escapeway provisions contained in 30 C.F.R. § 57.11050(a) (as such standard exists as of the date of the Agreement) at all currently existing Doe Run mines (comprising of Sweetwater Mine/Mill, Mine ID No. 23-00458; Viburnum #29 Mine, Mine ID No. 23-00495; Brushy Creek Mine/Mill, Mine ID No. 23-00499; Fletcher Mine/Mill, Mine ID No. 23-00409; Viburnum #35 Casteel Mine, Mine ID No. 23-01800; and Buick Mine, Mine ID No. 23-00457) presently and in the future. In

the event Doe Run consolidates any of the aforementioned mines and/or MSHA assigns new Mine IDs to the aforementioned mines, the Parties intend for the Agreement to apply to the consolidated mine(s) (regardless of mine name) and newly issued mine IDs.

ORDER

After considering the representations and documentation submitted in this case, I conclude that the Agreement is appropriate under the criteria set forth in the Mine Act.

WHEREFORE, the Parties' Joint Motion to Approve Settlement and Dismiss Proceeding is **GRANTED**.

It is **ORDERED** that Citation Nos. 8626619, 8626620, 8626621, 8626622 and 8626623 are vacated.

It is **FURTHER ORDERED** that the Parties' Agreement be approved as an enforceable Order of the Federal Mine Safety and Health Review Commission.

It is **FURTHER ORDERED** that Doe Run locate and use Refuge Chambers and DPOSS and follow other protective provisions as provided in the Agreement.

It is **FURTHER ORDERED** that absent future rulemaking modifying relevant miner escape provisions in Subpart J of 30 CFR Part 57, the Agreement is to provide a defined and enforceable means of compliance with the escapeway provisions contained in 30 C.F.R. § 57.11050(a) (as such regulation exists as of the date of the Agreement) at all Doe Run mines (Sweetwater Mine/Mill, Mine ID No. 23-00458; Viburnum #29 Mine, Mine ID No. 23-00495; Brushy Creek Mine/Mill, Mine ID No. 23-00499; Fletcher Mine/Mill, Mine ID No. 23-00409; Viburnum #35 Casteel Mine, Mine ID No. 23-01800; and Buick Mine, Mine ID No. 23-00457) presently and in the future.

It is **FURTHER ORDERED** that the above-captioned Contest and Penalty dockets be dismissed.



David P. Simonton
Administrative Law Judge

Distribution: (U.S. First Class Mail)

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