

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-434-9900 / FAX: 202-434-9949

March 31, 2020

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

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2020-0203
A.C. No. 46-01318-505388

v.

THE HARRISON COUNTY COAL
COMPANY,
Respondent

Mine: Harrison County Mine

ORDER ACCEPTING APPEARANCE
DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge McCarthy

This case is before the undersigned upon a 101-citation Petition for the Assessment of Civil Penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). This docket was created prior to the policy of splitting dockets with excessive amounts of citations. Under the current policy, this docket would not have been accepted in its current, voluminous state.

The Secretary of Labor's Conference and Litigation Representative ("CLR") filed a notice of limited appearance with the penalty petition. It is **ORDERED** that the CLR be accepted to represent the Secretary. *Cyprus Emerald Res. Corp.*, 16 FMSHRC 2359 (Nov. 1994).

The CLR has filed a motion to approve settlement proposing a reduction in the penalties from \$59,978.00 to \$58,109.00. The CLR states that Citations No. 9185453, 9186421, and 9187211 have been vacated. The Secretary's discretion to vacate a citation or order is not subject to review. *E.g., RBK Constr. Inc.*, 15 FMSHRC 2099 (Oct. 1993). Citation No. 9186521 remains unchanged, but the CLR justifies the reduction in penalty by stating there is a legitimate factual and legal dispute regarding gravity and negligence. The CLR also requests that Citation No. 9186420 be modified to reduce the level of negligence from moderate to low.

The Respondent's parent company, Murray Energy Holdings Co., filed for Chapter 11 Bankruptcy Protection on October 29, 2019, in the United States Bankruptcy Court for the Southern District of Ohio, *In re Murray Energy Holdings Co.*, Case No. 19-56885. As stated in

the settlement motion, some of the citations in this docket are subject to the bankruptcy proceeding, while other citations are not. As stated below, the Respondent will pay the citations in accordance with terms of the settlement agreement.

Section 362(a) of the Bankruptcy Code provides for an automatic stay of the commencement or continuation of any administrative or judicial proceedings against a Chapter 11 Bankruptcy petitioner. 11 U.S.C. § 362(a). An exception to this stay, however, is granted by §362(b)(4), which exempts from the automatic stay any proceeding by a governmental unit to enforce its police or regulatory power. 11 U.S.C. §362(b)(4). This exception has been applied to cases seeking equitable relief and cases concerning monetary damages or penalties. *See In re Commerce Oil Co.*, 847 F.2d 291, 297 (6th Cir. 1988); *United States v. Nicolet, Inc.*, 857 F.2d 202, 208-10 (3d Cir. 1988); *U.S. v. Oil Transport Co., Inc.*, 172 B.R. 834 (Bankr. E.D. La. 1994); *U.S. v. Energy Intern., Inc.*, 19 B.R. 1020 (Bankr. S.D. Ohio 1981) (holding that action by the United States to collect a civil penalty assessed by the Department of the Interior, Office of Surface Mining, against debtor, for numerous violations of Surface Mining Control and Reclamation Act of 1977, was one to enforce its regulatory power and thus not stayed by the debtor's filing of a bankruptcy petition)).

The Commission has held that the Secretary of Labor, Department of Labor, and MSHA are “government units” within the meaning of 362(b)(4), as the Secretary of Labor brings civil penalty proceedings in an effort to effectuate and enforce the mandatory safety standards of the Mine Act. *Big Laurel Mining Corp.*, 37 FMSHRC 1997, 1997-99 (Sept. 2015); *Hidden Splendor Res., Inc.*, 35 FMSHRC 1548, 1549-50 (June 2013); *Hoist Excavating, Inc.*, 17 FMSHRC 101, 102 (Feb. 1995); *Jim Walter Res., Inc.*, 12 FMSHRC 1521, 1530 (Aug. 1990).

Although the entry of a money judgment by a governmental unit, if related to its police or regulatory powers, is not affected by the automatic stay, actual enforcement of such judgment must take place through the bankruptcy court. *In re Weller*, 189 B.R. 467, 471 (Bankr. E.D. Wis. 1995); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 834 (9th Cir.1991); *NLRB v. P.I.E. Nationwide, Inc.*, 923 F.2d 506 (7th Cir.1991); *Eddleman v. U.S. Dept. of Labor*, 923 F.2d 782 (10th Cir.1991); *In re Tauscher*, 7 B.R. 918 (Bankr. E.D. Wis. 1981).

The undersigned considered the representations and documentation submitted in this case, and the undersigned concludes that the proffered settlement is fair, reasonable, appropriate under the facts, and protects the public interest under *The American Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016), and is appropriate under the criteria set forth in § 110(i) of the Act. The settlement amounts are as follows:

<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>	<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>
9185453	\$654.00	\$0.00	9185713	\$344.00	\$344.00
9185454	\$514.00	\$514.00	9185714	\$2,550.00	\$2,550.00
9185455	\$514.00	\$514.00	9185715	\$121.00	\$121.00
9185456	\$405.00	\$405.00	9186425	\$154.00	\$154.00
9185457	\$230.00	\$230.00	9186426	\$558.00	\$558.00
9185979	\$372.00	\$372.00	9186427	\$319.00	\$319.00
9185458	\$214.00	\$214.00	9186428	\$121.00	\$121.00
9185459	\$214.00	\$214.00	9186429	\$250.00	\$250.00
9185706	\$250.00	\$250.00	9186430	\$1,345.00	\$1,345.00
9186408	\$604.00	\$604.00	9189333	\$154.00	\$154.00
9186409	\$372.00	\$372.00	9189334	\$474.00	\$474.00
9186410	\$405.00	\$405.00	9186431	\$604.00	\$604.00
9186411	\$121.00	\$121.00	9189336	\$121.00	\$121.00
9186412	\$142.00	\$142.00	9185716	\$214.00	\$214.00
9186413	\$558.00	\$558.00	9186434	\$2,993.00	\$2,993.00
9189323	\$474.00	\$474.00	9186435	\$2,353.00	\$2,353.00
9185707	\$121.00	\$121.00	9186436	\$344.00	\$344.00
9186414	\$121.00	\$121.00	9186437	\$121.00	\$121.00
9186415	\$474.00	\$474.00	9186438	\$474.00	\$474.00
9186416	\$474.00	\$474.00	9186439	\$474.00	\$474.00
9186417	\$250.00	\$250.00	9185717	\$181.00	\$181.00
9186418	\$1,852.00	\$1,852.00	9185718	\$214.00	\$214.00
9186419	\$2,763.00	\$2,763.00	9185719	\$372.00	\$372.00
9189324	\$474.00	\$474.00	9186520	\$405.00	\$405.00
9189325	\$121.00	\$121.00	9186521	\$1,057.00	\$688.00
9189326	\$708.00	\$708.00	9186522	\$604.00	\$604.00
9189327	\$270.00	\$270.00	9182135	\$250.00	\$250.00
9185708	\$832.00	\$832.00	9182136	\$121.00	\$121.00
9185709	\$6,148.00	\$6,148.00	9186523	\$121.00	\$121.00
9186420	\$405.00	\$181.00	9186524	\$121.00	\$121.00
9186421	\$250.00	\$0.00	9186525	\$121.00	\$121.00
9186422	\$902.00	\$902.00	9189342	\$604.00	\$604.00
9186423	\$832.00	\$832.00	9189343	\$372.00	\$372.00
9185710	\$121.00	\$121.00	9186480	\$604.00	\$604.00
9185711	\$2,763.00	\$2,763.00	9186527	\$1,345.00	\$1,345.00
9186424	\$181.00	\$181.00	9186528	\$181.00	\$181.00
9189331	\$121.00	\$121.00	9186529	\$154.00	\$154.00
9189332	\$250.00	\$250.00	9186530	\$154.00	\$154.00
9185712	\$604.00	\$604.00	9186532	\$250.00	\$250.00

<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>	<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>
9186533	\$214.00	\$214.00	9186484	\$2,550.00	\$2,550.00
9186481	\$1,345.00	\$1,345.00	9186538	\$832.00	\$832.00
9186535	\$474.00	\$474.00	9186539	\$168.00	\$168.00
9187211	\$372.00	\$0.00	9186540	\$319.00	\$319.00
9187212	\$474.00	\$474.00	9186541	\$121.00	\$121.00
9186482	\$604.00	\$604.00	9189350	\$372.00	\$372.00
9189345	\$372.00	\$372.00	9189351	\$474.00	\$474.00
9189346	\$372.00	\$372.00	9189352	\$121.00	\$121.00
9189347	\$121.00	\$121.00	9189353	\$121.00	\$121.00
9189348	\$1,242.00	\$1,242.00	9186545	\$270.00	\$270.00
9189349	\$121.00	\$121.00	9189354	\$250.00	\$250.00
9186483	\$270.00	\$270.00	TOTAL	\$59,978.00	\$58,109.00

WHEREFORE, the motion for approval of settlement is **GRANTED**.

It is **ORDERED** that Citation No. 9186420 be **MODIFIED** to reduce the level of negligence from moderate to low.

It is further **ORDERED** that the operator pay a total penalty of \$58,109.00 pursuant to the terms of the settlement agreement.¹

Thomas P. McCarthy

Thomas P. McCarthy
Administrative Law Judge

¹ Payment should be sent to: Pay.gov, a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508> or, alternately, Mine Safety & Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.

Distribution:

Chris A. Weaver
U.S. Department of Labor
MSHA 604 Cheat Road
Morgantown, WV 26508

Wm. Allen McGilton
Murray Energy Corporation
46226 National Road
St. Clairsville, OH 43950

/ztb