

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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May 10, 2023

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

v.

TWIN STATE MINING, INC.,  
Respondent

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2023-0051  
A.C. No. 46-09496-565217

Mine: Mine No. 43

**DECISION APPROVING SETTLEMENT**

The Secretary has filed a Motion to Approve Settlement to which Respondent has agreed. I have considered the six statutory civil penalty criteria contained at § 110(i) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 820(i), and find that the proposed penalty amounts are appropriate. It is hereby ORDERED that:

The penalty for the now-admitted violation in this case is reduced as follows:

Citation/Order	MSHA's Proposed Penalty	Settlement Amount	Other modifications to citation/order
9566590	\$3,546	\$2,500	No modifications to the inspector's evaluation but 30% reduction in penalty

**Citation No. 9566590** alleges a now-admitted violation of 30 C.F.R. §75.517. That standard is derived from a statutory provision. It is titled "Power wires and cables; insulation and protection," and provides "Power wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected."

The issuing inspector described the condition or practice as follows:

The cable on the #1 roof bolter located on the #2 section is not insulated adequately and fully protected, in that when checked there are 2 damaged places in the cable exposing the inner leads and one of the damaged areas has damage to one of the inner leads exposing the inner bare wires to miners. Standard 75.517 was cited 26 times in two years at mine 4609496 (26 to the operator, 0 to a contractor).

Petition for civil penalty at 19.

The citation was terminated upon the following action:

*Both affected areas have been cleaned and the damaged lead has been repaired and the cable has been taped up in both places. Id. (emphasis added).*

The Settlement Motion offers the following for the penalty reduction:

The basis for the penalty reduction is that the Respondent claims it would present evidence at hearing that the bolter's power cable was insulated adequately and fully protected upon the inspector's arrival, and that the inspector himself instructed that the tape which served to protect and insulate the cable be removed. Thus, Respondent claims that but for the inspector requiring the removal of the tape which was insulating and protecting the inner leads of the cable, there would have been no inner leads exposed and no violation of section 75.517. In light of this dispute, the parties agree to disagree over the meaning of the potential evidence, and the proposed modifications are acceptable to the parties in lieu of the hearing process.

Motion at 3.

### **Analysis:**

Violations of this nature are especially serious. One need look no further than a 2022 fatality attributable to this very standard. As stated in the MSHA fatal electrical accident report: "On September 1, 2022, at approximately 4:40 p.m., Kristofer Ball, a 33 year-old roof bolter with approximately 12 years of mining experience, was fatally injured when he contacted an energized 480-volt trailing cable. The accident occurred because the mine operator did not: 1) fully protect the roof bolting machine's trailing cable, and 2) provide adequate task training for handling the roof bolting machine's trailing cable."

<https://www.msha.gov/data-reports/fatality-reports/2022/september-1-2022-fatality/final-report>.

Other fatalities attributable to this standard have occurred. See, for example:

<https://arlweb.msha.gov/FATALS/2003/FTL03c21.htm> and

<https://arlweb.msha.gov/readroom/FOIA/2007InternalReviews/Sago%20Internal%20Review%20Report.pdf>

Although the Court can appreciate that the \$1,046.00 reduction in the penalty must be balanced against the cost of proceeding to a hearing, if that is the test for settlement then many

citations would be impacted by such a *de facto* policy. Further, a \$1,000.00 plus penalty reduction is not a negligible sum.

Here, it is noted that the Secretary does not buy into the Respondent's claim and that is understandable because the inspector found *two* damaged areas and it does not stand to reason that inspectors would be in the business of creating violations, which is essentially the claim being lodged here. *Something* caught the inspector's attention. It is unlikely in the extreme that an inspector would require an adequately insulated and fully protected cable to be untapped, only to have it retaped.

From the Court's perspective, situations like this are more likely to be resolved if it had the ability to see the inspector's notes. Based on the information available, it appears that Inspector Don L. Vest was diligently performing his inspection responsibilities, an observation the Secretary implicitly adopts. Also, as the Court has recently noted, photographs, where they can be safely taken in the underground coal mining environment, may dispel what may be frivolous claims by mine operators. Of course, the Court would need to have the ability to see such photographs, an option presently not available.

## Conclusion

Despite the Court's concerns, as expressed above, review of settlement motions is presently circumscribed by Commission case law. As such, the Court has considered the Secretary's Motion and approves it *solely* on the basis of the Commission's decisions in *The American Coal Co.*, 40 FMSHRC 983 (Aug. 2018) and *Rockwell Mining, LLC*, 40 FMSHRC 994 (Aug. 2018) for the standard to be applied by Commission administrative law judges when reviewing such settlement motions under the Commission's interpretation of section 110(k) of the Mine Act. Per the Commission's decisions on the scope of a judge's review authority of settlements, the "information" presented in this settlement motion is sufficient for approval.

Accordingly, the motion to approve settlement is **GRANTED**, and **Twin State Mining, Inc. is ORDERED** to pay the Secretary of Labor the sum of **\$2,500.00** within 30 days of this order.<sup>1</sup> Upon receipt of payment, this case is **DISMISSED**.

*William B. Moran*

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William B. Moran  
Administrative Law Judge

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<sup>1</sup> Penalties may be paid electronically at Pay.Gov, a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508>. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration, P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers. It is vital to include Docket and A.C. Numbers when remitting payments.

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