

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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June 2, 2017

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|-------------------------------|---|---------------------------|
| SECRETARY OF LABOR, | : | CIVIL PENALTY PROCEEDING |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | Docket No. WEVA 2016-0621 |
| Petitioner, | : | A.C. No. 46-04236-419753 |
| v. | : | |
| | : | |
| SEMINOLE COAL RESOURCES, LLC, | : | Mine: Maple Eagle No. 1 |
| Respondent. | : | |

DECISION APPROVING SETTLEMENT

Before: Judge Moran

This case is before the Court upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. The Secretary has filed a motion to approve settlement. The originally assessed amount was \$5,338.00, and the proposed settlement is for \$3,737.00. The Secretary also requests that the single citation at issue be modified, as indicated below.

The Secretary presents the following basis for the proposed changes to Citation No. 9111506, which alleged a violation of 30 C.F.R. § 75.220(a)(1):

The Respondent contends that the Section Foreman examined the working places and found no issues in the #5 entry. The Respondent also contends that four reflectors were hung in the crosscut and entry as required by the plan but that the inspector did not agree with the location of the reflectors. The Respondent would also argue if this matter went to hearing that it was not reasonably likely that anyone would travel in by the unsupported roof and, therefore, the citation should not have been designated as S&S. In light of these arguments and recognizing the uncertainty of the outcome of these issues, the Secretary agrees to the above modification and penalty reduction.

Motion at 3.

Again, we see the 30% reduction the Secretary seems to be offering with frequency. In this instance, the Court will infer that the Secretary is admitting that there are legitimate questions of fact raised by the Respondent, though for some reason the Secretary is reticent to admit this frontally, relying instead upon his wording that “[i]n light of these arguments and recognizing the uncertainty of the outcome of these issues, the Secretary agrees to the above modification and penalty reduction.” *Id.*

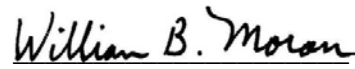
With the comments above in mind, the Court has considered the representations submitted in this case and, with those, the implicit acknowledgement by the Secretary that the Respondent's representations present legitimate issues of fact. Working under that inference, the Court concludes that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act. The settlement amounts are as follows:

| <u>Citation No.</u> | <u>Assessment</u> | <u>Settlement Amount</u> |
|---------------------|-------------------|--------------------------|
| 9111506 | \$5,338.00 | \$3,737.00 |
| TOTAL: | \$5,338.00 | \$3,737.00 |

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

It is **ORDERED** that Citation No. 9111506 be **MODIFIED** to a section 104(a) citation, with a high negligence designation.

It is further **ORDERED** that Respondent pay a penalty of \$3,737.00 within 30 days of this order.¹ Upon receipt of payment, this case is **DISMISSED**.


William B. Moran
Administrative Law Judge

Distribution:

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¹ Payment should be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P.O. BOX 790390, ST. LOUIS, MO 63179-0390