

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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JUN 08 2015

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

Petitioner,

v.

PEABODY MIDWEST MINING LLC,

Respondent.

CIVIL PENALTY PROCEEDING

Docket No. LAKE 2011-302  
A.C. No. 12-02010-242576

Mine: Air Quality #1 Mine

DAILY CIVIL PENALTY PROCEEDING

Docket No. LAKE 2011-856  
A.C. No. 12-02010

Mine: Air Quality #1 Mine

**DECISION APPROVING SETTLEMENT**  
**ORDER TO MODIFY**  
**ORDER TO PAY**

Before: Judge Harner

These cases are before me upon petitions for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d) ("Mine Act"). A Joint Motion for approval of a settlement agreement on these cases has been submitted to me.

**Docket No. LAKE 2011-856** concerns a proposed daily civil penalty issued pursuant to Section 110(b) of the Mine Act for a continuing violation. The underlying Section 104(a) citation (No. 6670852) for a violation of 30 C.F.R. § 50.41 was issued on November 9, 2010. The Respondent, Peabody Midwest Mining, contested the citation (Docket No. LAKE 2011-118-R) before the Federal Mine Safety and Health Review Commission ("Commission"). On June 23, 2011, the Secretary issued a notification of the proposed assessment of penalty to Peabody pursuant to 30 C.F.R. § 100.5(c), and proposed a daily penalty of \$4,000.00 until Peabody abated the citation. Contest proceedings related to the underlying citations continued before the Commission and the United States Court of Appeals for the Seventh Circuit. The underlying citation was affirmed by the Seventh Circuit on April 26, 2013. 715 F.3d 631. On May 15, 2013, Peabody provided notice to the Secretary that although it disagreed with the Court's decision it would comply with it, and the proposed daily penalty stopped accruing.

The total penalty that accrued until Respondent notified the Secretary that it would comply with the Court's decision and the penalty stopped accruing was approximately \$2,760,000. By order dated December 18, 2014, this Court appointed Thomas Stock and Mark

Malecki as settlement attorneys. The proposed settlement amount agreed to by the parties is \$642,000.00, payable in two installments as set forth below.

For the reasons that follow I approve the parties' joint motion to settle this docket. Under the guidance of the appointed settlement attorneys, the parties were able to fully discuss and confer on their respective positions with respect to this docket. In addition, I note that although the Act provides for a daily civil penalty in response "to operator recalcitrance in situations where ... [a] violation is not abated in a timely manner"<sup>1</sup>, the Secretary's decision to propose a daily civil penalty is discretionary as is the dollar amount of such daily civil penalty. Further, the issues and defenses raised in the contest proceeding were substantial and involved, inter alia, the interpretation of other federal statutes and their relationship to the Mine Act. Finally, the Respondent's failure to provide the requested Part 50 information did not affect the health and safety of miners while performing ongoing mining operations at the mine.

With regards to Citation No. 6670852 contained in **Docket No. LAKE 2011-302**, the Respondent has agreed to pay the originally assessed amount of \$196.00, and the parties agree that the negligence designation will be modified from "High" to "Moderate."

Having considered the above, the Joint Motion and the other documentation, I find that the modifications are reasonable as set forth in the motion to approve settlement and conclude that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Act. The motion to approve settlement is **GRANTED**, and the modifications are accepted as set forth in the motion.

With regards to **Docket No. LAKE 2011-856**, Peabody Midwest Mining LLC is hereby **ORDERED** to pay the Secretary of Labor the sum of \$642,000.00. The penalty will be payable in two installments, with \$321,000.00 being due within 30 days of this decision, and \$321,000.00 being due within 120 days of this decision.<sup>2</sup> Upon receipt of the two payment, Docket No. LAKE 2011-856 is **DISMISSED**.

With regards to **Docket No. LAKE 2011-302**, Peabody Midwest Mining LLC is hereby **ORDERED** to pay the Secretary of Labor \$196.00 within 30 days of the date of this decision. Upon receipt of the payment, Docket No. LAKE 2011-302 is **DISMISSED**.



Janet G. Harner  
Administrative Law Judge

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<sup>1</sup> See *Thunder Basin Coal Co.*, 19 FMSHRC 1495, 1505 (Sept. 1997).

<sup>2</sup> <sup>1</sup>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

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