

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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July 14, 2021

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

v.

WARRIOR MET COAL MINING, LLC,  
Respondent

CIVIL PENALTY PROCEEDINGS

Docket No. SE 2020-0213  
A.C. No. 01-01401-516467

Docket No. SE 2020-0232  
A.C. No. 01-01401-518427

Mine: No. 7 Mine

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

Before: Judge McCarthy

This case is before the undersigned upon Petitions 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). The Solicitor has filed a motion to approve settlement proposing a reduction in the penalties from \$61,707.00 to \$33,035.00. Citations No. 9493251, 9493254, 9493165, 9493261, 9493263, 9493249, 9493250, 9493164, and 9493167 remain unchanged, but the Solicitor justifies the reductions in penalties by stating there are legitimate factual and legal disputes regarding gravity and negligence. The Solicitor also requests that

Citation No. 9493255 be modified to reduce the number of persons affected from two to one;

Citations No. 9493257 and 9493256 be modified to reduce the likelihoods of injury or illness from highly likely to reasonably likely and the numbers of persons affected from two to one;

Citation No. 9493166 be modified to reduce the level of negligence from high to moderate;

Citations No. 9133601, 9493273, 9264049, 9264050, and 9493308 be modified to reduce the levels of negligence from moderate to low;

Citations No. 9493031 and 9493032 be modified to reduce the expected injuries or illnesses from fatal to permanently disabling; and

Citation No. 9230950 be modified to reduce the level of negligence from high to low.<sup>1</sup>

The Secretary also argues that “

[t]he Secretary’s use of [the 30 C.F.R. § 100.3] regular assessment tables in settlement is a *prima facie* indication that the penalty reduction is fair, reasonable, and adequate under the facts, and protects the public interest. It is appropriate to defer to the judgment of the parties[] in arriving at a modified penalty based on the § 100.3 tables.

Settlement Mot. at 9 (citing *Vindex Energy Corp.*, 34 FMSHRC 223, 224 (Jan. 2012) (ALJ)). However, not only is the Commission not bound by 30 C.F.R. § 100.3, but it is the purview of the Commission—not the Secretary or regulations issued by the Secretary—to determine whether a settlement is appropriate under the criteria set forth in section 110(i) of the Act. *Sellersburg Stone Co. v. FMSHRC*, 736 F.2d 1147, 1151-52 (7th Cir. 1984) (“[N]either the ALJ nor the Commission is bound by the Secretary’s proposed penalties. . . . [W]e find no basis upon which to conclude that these MSHA [penalty] regulations also govern the Commission.”); *Hidden Splendor Res., Inc.*, 36 FMSHRC 3099, 3101 (Dec. 2014) (“The Secretary’s regulations at 30 C.F.R. Part 100 apply only to the Secretary’s penalty proposals, while the Commission exercises independent “authority to assess all civil penalties provided [under the Act]’ by applying the six criteria set forth in section 110(i).” (quoting 30 U.S.C. § 820(i))).

In order to overcome this burden, the Secretary must present evidence to a judge—exercising his or her independent authority—to satisfy the six criteria set forth in section 110(i). Simply pointing to the Secretary’s regulations does not overcome this burden. Therefore, the undersigned rejects the Solicitor’s contention that the application of section 100.3 establishes a *prima facie* case for a reasonable settlement.

Consequently, the undersigned evaluated the settlement agreement absent the argument rejected above.

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 section 110(i) of the Act. The settlement amounts are as follows:

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<sup>1</sup> Although there were some clerical errors in the Settlement Motion, the Secretary clarified the proposed settlement in an email dated July 13, 2021. This Decision reflects those clarifications.

<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>	<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>
9493251	\$1,076.00	\$807.00	9493167	\$782.00	\$587.00
9493254	\$482.00	\$362.00	9230950	\$324.00	\$137.00
9493255	\$2,595.00	\$1,946.00	9493269	\$1,166.00	\$1,166.00
9493257	\$19,178.00	\$7,995.00	9493273	\$720.00	\$325.00
9493256	\$19,178.00	\$7,995.00	9264049	\$1,166.00	\$524.00
9493165	\$2,394.00	\$1,796.00	9149557	\$351.00	\$351.00
9493166	\$2,394.00	\$1,796.00	9264050	\$144.00	\$121.00
9493261	\$720.00	\$540.00	9493308	\$144.00	\$121.00
9493263	\$720.00	\$540.00	9493031	\$482.00	\$242.00
9493249	\$1,076.00	\$807.00	9493270	\$1,166.00	\$1,166.00
9493250	\$2,394.00	\$1,796.00	9493032	\$482.00	\$242.00
9133601	\$1,166.00	\$582.00	9493177	\$144.00	\$144.00
9493164	\$1,263.00	\$947.00			
				<hr/>	<hr/>
				\$61,707.00	\$33,035.00

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

It is **ORDERED** that Citation No. 9493255 be **MODIFIED** to reduce the number of persons affected from two to one.

It is **ORDERED** that Citations No. 9493257 and 9493256 be **MODIFIED** to reduce the likelihoods of injury or illness from highly likely to reasonably likely and the numbers of persons affected from two to one.

It is **ORDERED** that Citation No. 9493166 be **MODIFIED** to reduce the level of negligence from high to moderate.

It is **ORDERED** that Citations No. 9133601, 9493273, 9264049, 9264050, and 9493308 be **MODIFIED** to reduce the levels of negligence from moderate to low.

It is **ORDERED** that Citations No. 9493031 and 9493032 be **MODIFIED** to reduce the expected injuries or illnesses from fatal to permanently disabling.

It is **ORDERED** that Citation No. 9230950 be **MODIFIED** to reduce the level of negligence from high to low.

It is further **ORDERED** that the operator pay a total penalty of \$33,035.00 within thirty days of this order.<sup>2</sup>

*Thomas P. McCarthy*

Thomas P. McCarthy  
Administrative Law Judge

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<sup>2</sup> 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.