

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

Office of Administrative Law Judges  
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Denver, CO 80202-2536  
303-844-3577 FAX 303-844-5268

July 17, 2015

THE AMERICAN COAL COMPANY,  
Contestant

v.

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

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

v.

THE AMERICAN COAL COMPANY,  
Respondent

**CONTEST PROCEEDINGS**

Docket No. LAKE 2007-215-R  
Order No. 6669778; 08/15/2007

Docket No. LAKE 2007-216-R  
Order No. 6669779; 08/15/2007

Galatia Mine  
Mine ID. 11-02752

**CIVIL PENALTY PROCEEDINGS**

Docket No. LAKE 2007-171  
A.C. No. 11-02752-122978-08

Docket No. LAKE 2007-172  
A.C. No. 11-02752-122978-09

Docket No. LAKE 2007-202  
A.C. No. 11-02752-125002-01

Docket No. LAKE 2007-205  
A.C. No. 11-02752-125002-04

Docket No. LAKE 2008-004  
A.C. No. 11-02752-127021-01

Docket No. LAKE 2008-037  
A.C. No. 11-02752-129287

Docket No. LAKE 2008-080  
A.C. No. 11-02752-131664-01

Docket No. LAKE 2008-082  
A.C. No. 11-02752-131664-02

Docket No. LAKE 2008-120  
A.C. No. 11-02752-133868-02

Docket No. LAKE 2008-139  
A.C. No. 11-02752-136300-02

Docket No. LAKE 2008-140  
A.C. No. 11-02752-136300-03

Docket No. LAKE 2008-141  
A.C. No. 11-02752-136300-04

Docket No. LAKE 2008-143  
A.C. No. 11-02752-136300-06

Docket No. LAKE 2008-231  
A.C. No. 11-02752-139912-01

Docket No. LAKE 2008-232  
A.C. No. 11-02752-139912-02

Docket No. LAKE 2008-234  
A.C. No. 11-02752-139912-04

Docket No. LAKE 2008-235  
A.C. No. 11-02752-139912-05

Docket No. LAKE 2008-239  
A.C. No. 11-02752-139912-09

Docket No. LAKE 2008-526-A  
A.C. No. 11-02752-153962-02

Docket No. LAKE 2008-528  
A.C. No. 11-02752-153962-04

Docket No. LAKE 2008-529  
A.C. No. 11-02752-153962-05

Docket No. LAKE 2008-531  
A.C. No. 11-02752-153962-07

Docket No. LAKE 2008-582  
A.C. No. 11-02752-157112-01

Docket No. LAKE 2008-583  
A.C. No. 11-02752-157112-02

Docket No. LAKE 2008-584  
A.C. No. 11-02752-157112-03

Docket No. LAKE 2008-585  
A.C. No. 11-02752-157112-04

Docket No. LAKE 2008-624  
A.C. No. 11-02752-160144-01

Docket No. LAKE 2008-625  
A.C. No. 11-02752-160144-02

Docket No. LAKE 2008-626  
A.C. No. 11-02752-160144-03

Docket No. LAKE 2009-007  
A.C. No. 11-02752-162890-02

Docket No. LAKE 2009-008  
A.C. No. 11-02752-162890-03

Docket No. LAKE 2009-206  
A.C. No. 11-02752-171747-01

Docket No. LAKE 2009-445  
A.C. No. 11-02752-182275-02

Docket No. LAKE 2009-546  
A.C. No. 11-02752-188266

Galatia Mine

### **DECISION ON REMAND**

These cases were brought under section 105(d) of the Federal Mine Safety and Health Act of 1977 (the “Mine Act”). They are now before me upon a remand order issued by the Commission on April 17, 2015. The history of these cases is complicated and is summarized below.

The American Coal Company (“AmCoal”) contested all of the citations and orders (“citations”) at issue in the above dockets. A large number of the citations were issued on the basis of notices to provide safeguards authorized under 30 U.S.C. § 874(b). AmCoal filed a motion for summary decision on the legal issues it raised concerning notices to provide safeguards and the citations issued under such safeguard notices. By order dated December 17, 2010, I denied AmCoal’s motion for summary decision on the safeguard issues it raised. *The American Coal Company*, 33 FMSHRC 2636 (issued Dec. 2010, published Oct. 2011). AmCoal continued to contest three of the citations that were based on safeguard notices but it agreed to

settle the remaining citations while reserving the right to appeal to the Commission the legal issues it raised in its motion for summary decision.

On October 24, 2011, I issued a decision after hearing on the merits of three citations issued on the basis of safeguard notices. *The American Coal Company*, 33 FMSHRC 2574 (Oct. 2011). I also approved the settlement of a number of other citations in that decision. Also on October 24, 2011, I issued a separate decision approving settlement of more citations issued in these dockets. Finally, on November 9, 2011, I issued another decision approving the settlement of another group of citations in these dockets. All three decisions incorporated by reference my December 17, 2010, order denying AmCoal's motion for summary decision and they constituted my final orders in the cases so that the validity of the underlying safeguards could be appealed to the Commission.<sup>1</sup> Between these three decisions, all of the citations in the above dockets were settled or adjudicated including citations that were issued for violations of mandatory safety standards.<sup>2</sup>

On November 23, 2011, AmCoal filed a petition for discretionary review with the Commission raising issues concerning the validity of citations issued by MSHA inspectors based on notices to provide safeguards. The Commission granted AmCoal's petition for discretionary review on December 2, 2011, and stayed all of the cases listed in the caption above.<sup>3</sup>

On December 8, 2014, the Commission ordered AmCoal to "submit a supplemental document listing the citation number for each of the [safeguard] citations referenced in its petition" and to "categorize the citations by the cited safeguard number." (Order at 1). AmCoal was also required to associate the citations by docket number and it was encouraged to confer with the Secretary to ensure that the list was complete and accurate. The Commission issued another order on February 19, 2015, asking the Secretary to review the contested citations in the same manner. Both AmCoal and the Secretary filed detailed responses.

On March 31, 2015, AmCoal filed with the Commission a motion to dismiss its appeal of all the cases with prejudice. It agreed to pay any penalties that I previously assessed for the violations in these cases that remain unpaid. The Secretary did not object to the motion. The Commission's order of April 17, 2015, remanded the cases to me "for further proceedings, as appropriate, with respect to 'any issues that remain regarding the safeguard-related violations in these matters.'" (Order at 2 quoting AmCoal Motion at 1).

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<sup>1</sup> These three decisions also included dockets that did not involve citations issued based upon safeguard notices. These dockets were not appealed to the Commission and are not at issue.

<sup>2</sup> As noted in these decisions, I previously issued orders approving partial settlement for some of the citations in these dockets.

<sup>3</sup> While these cases were stayed, the Commission issued two decisions that resolved most if not all the safeguard issues raised by AmCoal in these cases. *The American Coal Company*, 34 FMSHRC 1963 (Aug. 2012); *Oak Grove Resources, LLC*, 35 FMSHRC 2009 (July 2013).

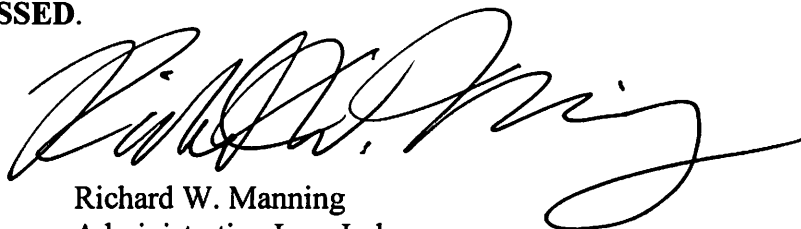
These cases involve 743 citations. Most of the citations were issued for violations of mandatory safety standards rather than notices to provide safeguards. AmCoal has already paid civil penalties for most of the citations in accordance with my three decisions. The amounts paid were based on settlement agreements reached by the parties and approved by me in decisions approving settlement or were assessed by me in my October 24, 2011 decision after hearing.

Given that AmCoal has withdrawn its appeal in these cases, they are all ripe for a final disposition. Upon remand, I ordered the parties to review the cases and the citations therein to determine the amount of any civil penalties that AmCoal has not yet paid. Working with MSHA's Office of Assessments, counsel for the Secretary prepared a table listing those citations for which AmCoal has not paid the entire penalty and the amount owed. The table does not list all of the citations in these dockets; it only lists those citations for which AmCoal has not paid the entire settled penalty amount.<sup>4</sup> The table is attached to this decision as Attachment A.

As set forth in Attachment A, the outstanding penalty amount is \$236,162. In order to ensure that the amount paid is properly credited to the correct docket, the Secretary asked and AmCoal agreed that AmCoal will prepare a separate check for each docket and that the citation numbers for that docket will be written on the corresponding stub of each check.

### **ORDER**

I previously concluded that the parties' proposed settlements for the citations are appropriate under the criteria set forth in section 110(i) of the Mine Act. The American Coal Company is **ORDERED TO PAY** the Secretary of Labor the sum of \$236,162 within 40 days of the date of this decision.<sup>5</sup> A separate check shall be written for each docket for the amount shown in Attachment A. The docket number for each docket listed in Attachment A shall be written on the face of the corresponding check. The docket number and citation numbers listed for each docket in Attachment A shall be written on the corresponding stub of each check. Upon payment, all of the dockets are **DISMISSED**.



Richard W. Manning  
Administrative Law Judge

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<sup>4</sup> During the review of these dockets by counsel and the Office of Assessments, it was discovered that some of the penalties previously paid by AmCoal for settled citations were not applied to the correct citations in the docket. Working with representatives of AmCoal and counsel for the Secretary, the Office of Assessments was able to work through all of the citations in the dockets and determine the amount that AmCoal owes for each citation. Once AmCoal makes the payment ordered herein, the total settled penalty for the citations in every docket will have been paid.

<sup>5</sup> The checks should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390. St. Louis, MO 63179-0390

**Distribution:**

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**RWM**

	Docket No.	Violation No.	Decision Date	Penalty Amount	Paid Penalty Amount	Amount owed by citation	Amount Owed per Docket
1	LAKE 2007-171						NONE
2	LAKE 2007-172						NONE
	LAKE 2007-202	6667237	11/9/2011	\$1,474.00	\$0.00	\$1,474.00	
	LAKE 2007-202	6667279	11/9/2011	\$3,800.00	\$2,188.00	\$1,612.00	
3	LAKE 2007-202						\$3,086.00
4	LAKE 2007-205	6667045	10/24/2011	\$231.00	\$0.00	\$231.00	\$231.00
5	LAKE 2008-120	7490899	10/24/2011	\$978.00	\$0.00	\$978.00	\$978.00
6	LAKE 2008-139	6668540	11/9/2011	\$10,000.00	\$0.00	\$10,000.00	\$10,000.00
	LAKE 2008-140	6668567	10/24/2011	\$3,000.00	\$0.00	\$3,000.00	
	LAKE 2008-140	6673224	10/24/2011	\$270.00	\$0.00	\$270.00	
7	LAKE 2008-140						\$3,270.00
	LAKE 2008-141	6668582	10/24/2011	\$605.00	\$0.00	\$605.00	
	LAKE 2008-141	6668589	8/13/2010	\$426.00	\$264.00	\$162.00	
8	LAKE 2008-141						\$767.00
	LAKE 2008-143	6668472	1/6/2011	\$2,678.00	\$224.00	\$2,454.00	
	LAKE 2008-143	6668476	10/24/2011	\$207.00	\$0.00	\$207.00	
	LAKE 2008-143	6673819	10/24/2011	\$207.00	\$0.00	\$207.00	
	LAKE 2008-143	6673827	10/24/2011	\$1,026.00	\$0.00	\$1,026.00	
	LAKE 2008-143	6673830	10/24/2011	\$13,332.00	\$0.00	\$13,332.00	
9	LAKE 2008-143						\$17,226.00
	LAKE 2008-231	6666950	11/9/2011	\$565.00	\$0.00	\$565.00	
	LAKE 2008-231	6666955	11/9/2011	\$2,282.00	\$930.00	\$1,352.00	
10	LAKE 2008-231						\$1,917.00
11	LAKE 2008-232	6673237	10/24/2011	\$770.00	\$0.00	\$770.00	\$770.00
12	LAKE 2008-234	6673849	10/24/2011	\$8,000.00	\$0.00	\$8,000.00	\$8,000.00
13	LAKE 2008-235	6673257	10/24/2011	\$655.00	\$0.00	\$655.00	\$655.00
	LAKE 2008-239	6668184	10/24/2011	\$182.00	\$0.00	\$182.00	
	LAKE 2008-239	6668187	10/24/2011	\$182.00	\$0.00	\$182.00	
14	LAKE 2008-239						\$364.00
15	LAKE 2008-37						NONE
16	LAKE 2008-4	6669734	10/24/2011	\$902.00	\$0.00	\$902.00	\$902.00
	LAKE 2008-526-A	6668529	10/24/2011	\$20,000.00	\$0.00	\$20,000.00	
	LAKE 2008-526-A	6668530	10/24/2011	\$60,000.00	\$0.00	\$60,000.00	
17	LAKE 2008-526-A						\$80,000.00
	LAKE 2008-528	6673665	10/24/2011	\$605.00	\$0.00	\$605.00	
	LAKE 2008-528	6673668	10/24/2011	\$605.00	\$0.00	\$605.00	
	LAKE 2008-528	6673908	10/24/2011	\$655.00	\$0.00	\$655.00	

	LAKE 2008-528	6673910	10/24/2011	\$4,000.00	\$0.00	\$4,000.00	
<b>18</b>	<b>LAKE 2008-528</b>						<b>\$5,865.00</b>
	LAKE 2008-529	6673303	10/24/2011	\$2,105.00	\$0.00	\$2,105.00	
	LAKE 2008-529	6673673	10/24/2011	\$770.00	\$0.00	\$770.00	
<b>19</b>	<b>LAKE 2008-529</b>						<b>\$2,875.00</b>
	LAKE 2008-531	6673323	10/24/2011	\$605.00	\$0.00	\$605.00	
	LAKE 2008-531	6674126	10/24/2011	\$605.00	\$0.00	\$605.00	
	LAKE 2008-531	6674130	10/24/2011	\$2,009.00	\$0.00	\$2,009.00	
	LAKE 2008-531	6674133	10/24/2011	\$2,009.00	\$0.00	\$2,009.00	
	LAKE 2008-531	6674134	10/24/2011	\$2,009.00	\$0.00	\$2,009.00	
	LAKE 2008-531	6674141	10/24/2011	\$605.00	\$0.00	\$605.00	
<b>20</b>	<b>LAKE 2008-531</b>						<b>\$7,842.00</b>
	LAKE 2008-582	6674223	10/24/2011	\$767.00	\$0.00	\$767.00	
	LAKE 2008-582	6674224	10/24/2011	\$767.00	\$0.00	\$767.00	
	LAKE 2008-582	6674227	10/24/2011	\$3,500.00	\$0.00	\$3,500.00	
	LAKE 2008-582	6674236	10/24/2011	\$3,300.00	\$0.00	\$3,300.00	
	LAKE 2008-582	6674238	10/24/2011	\$2,176.00	\$0.00	\$2,176.00	
	LAKE 2008-582	6674705	10/24/2011	\$2,009.00	\$0.00	\$2,009.00	
<b>21</b>	<b>LAKE 2008-582</b>						<b>\$12,519.00</b>
	LAKE 2008-583	6674246	10/24/2011	\$4,800.00	\$0.00	\$4,800.00	
	LAKE 2008-583	6674721	10/24/2011	\$405.00	\$0.00	\$405.00	
<b>22</b>	<b>LAKE 2008-583</b>						<b>\$5,205.00</b>
	LAKE 2008-584	6674254	10/24/2011	\$2,176.00	\$0.00	\$2,176.00	
	LAKE 2008-584	6674257	10/24/2011	\$4,800.00	\$0.00	\$4,800.00	
	LAKE 2008-584	6674259	10/24/2011	\$655.00	\$0.00	\$655.00	
<b>23</b>	<b>LAKE 2008-584</b>						<b>\$7,631.00</b>
	LAKE 2008-585	6672869	10/24/2011	\$122.00	\$0.00	\$122.00	
	LAKE 2008-585	6673970	10/24/2011	\$122.00	\$0.00	\$122.00	
	LAKE 2008-585	6674252	10/24/2011	\$122.00	\$0.00	\$122.00	
<b>24</b>	<b>LAKE 2008-585</b>						<b>\$366.00</b>
	LAKE 2008-624	6673583	10/24/2011	\$10,000.00	\$0.00	\$10,000.00	
	LAKE 2008-624	7572875	10/24/2011	\$2,678.00	\$2,073.00	\$605.00	
<b>25</b>	<b>LAKE 2008-624</b>						<b>\$10,605.00</b>
	LAKE 2008-625	6672884	11/9/2011	\$540.00	\$0.00	\$540.00	
	LAKE 2008-625	6674286	11/9/2011	\$2,104.00	\$0.00	\$2,104.00	
	LAKE 2008-625	6674289	11/9/2011	\$4,000.00	\$1,858.00	\$2,142.00	
	LAKE 2008-625	6674290	11/9/2011	\$686.00	\$0.00	\$686.00	
	LAKE 2008-625	6674293	11/9/2011	\$584.00	\$0.00	\$584.00	
<b>26</b>	<b>LAKE 2008-625</b>						<b>\$6,056.00</b>
<b>27</b>	<b>LAKE 2008-626</b>	<b>6674291</b>	<b>11/9/2011</b>	<b>\$338.00</b>	<b>\$243.00</b>	<b>\$95.00</b>	<b>\$95.00</b>
	LAKE 2008-80	6668113	10/24/2011	\$1,242.00	\$786.00	\$456.00	
	LAKE 2008-80	6668114	10/24/2011	\$2,105.00	\$0.00	\$2,105.00	
	LAKE 2008-80	6668116	10/24/2011	\$1,059.00	\$0.00	\$1,059.00	
<b>28</b>	<b>LAKE 2008-80</b>						<b>\$3,620.00</b>



	LAKE 2008-82	6668129	10/24/2011	\$1,059.00	\$0.00	\$1,059.00	
	LAKE 2008-82	6668133	10/24/2011	\$1,242.00	\$0.00	\$1,242.00	
	LAKE 2008-82	7490879	10/24/2011	\$559.00	\$0.00	\$559.00	
	LAKE 2008-82	7490881	10/24/2011	\$559.00	\$0.00	\$559.00	
	LAKE 2008-82	7490883	10/24/2011	\$945.00	\$0.00	\$945.00	
<b>29</b>	<b>LAKE 2008-82</b>						<b>\$4,364.00</b>
	LAKE 2009-206	6673542	11/9/2011	\$20,376.00	\$2,951.00	\$17,425.00	
	LAKE 2009-206	6673789	11/9/2011	\$540.00	\$0.00	\$540.00	
	LAKE 2009-206	6674586	11/9/2011	\$946.00	\$0.00	\$946.00	
	LAKE 2009-206	6674590	11/9/2011	\$362.00	\$0.00	\$362.00	
	LAKE 2009-206	6674592	11/9/2011	\$1,203.00	\$0.00	\$1,203.00	
<b>30</b>	<b>LAKE 2009-206</b>						<b>\$20,476.00</b>
	LAKE 2009-445	6683661	11/9/2011	\$378.00	\$134.00	\$244.00	\$244.00
	LAKE 2009-546	6683836	11/9/2011	\$5,135.00	\$0.00	\$5,135.00	
	LAKE 2009-546	6683841	11/9/2011	\$100.00	\$0.00	\$100.00	
<b>32</b>	<b>LAKE 2009-546</b>						<b>\$5,235.00</b>
	LAKE 2009-7	6673740	11/9/2011	\$1,855.00	\$1,315.00	\$540.00	
	LAKE 2009-7	6673741	11/9/2011	\$341.00	\$0.00	\$341.00	
	LAKE 2009-7	6674304	11/9/2011	\$1,330.00	\$0.00	\$1,330.00	
	LAKE 2009-7	6674307	11/9/2011	\$2,997.00	\$0.00	\$2,997.00	
	LAKE 2009-7	6674317	11/9/2011	\$965.00	\$0.00	\$965.00	
	LAKE 2009-7	6674319	11/9/2011	\$62.00	\$0.00	\$62.00	
	LAKE 2009-7	6674321	11/9/2011	\$2,000.00	\$0.00	\$2,000.00	
	LAKE 2009-7	6679304	11/9/2011	\$1,691.00	\$0.00	\$1,691.00	
	LAKE 2009-7	6679306	11/9/2011	\$1,133.00	\$0.00	\$1,133.00	
<b>33</b>	<b>LAKE 2009-7</b>						<b>\$11,059.00</b>
	LAKE 2009-8	6673117	11/9/2011	\$785.00	\$0.00	\$785.00	
	LAKE 2009-8	6673742	11/9/2011	\$1,491.00	\$0.00	\$1,491.00	
	LAKE 2009-8	6674329	11/9/2011	\$353.00	\$0.00	\$353.00	
	LAKE 2009-8	6674340	11/9/2011	\$618.00	\$0.00	\$618.00	
	LAKE 2009-8	6674344	11/9/2011	\$515.00	\$0.00	\$515.00	
	LAKE 2009-8	6674777	11/9/2011	\$218.00	\$41.00	\$177.00	
<b>34</b>	<b>LAKE 2009-8</b>						<b>\$3,939.00</b>
				\$249,169.00	\$13,007.00	\$236,162.00	<u>\$236,162.00</u>