

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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**JUL 27 2017**

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

v.

ALEX ENERGY, INC.;

ALPHA COAL WEST;

CUMBERLAND COAL RESOURCES,  
LP;

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 2017-0007  
A.C. No. 46-08787-419124

Mine: Jerry Fork Eagle

Docket No. WEVA 2016-0530  
A.C. No. 46-08977-414431

Mine: Edwight Surface Mine

Docket No. WEST 2016-0688  
A.C. No. 48-00732-417342

Mine: Belle Ayr Mine

Docket No. WEST 2017-0011  
A.C. No. 48-00732-419767

Mine: Belle Ayr Mine

Docket No. WEST 2017-0060  
A.C. No. 48-00732-422060

Mine: Belle Ayr Mine

Docket No. WEST 2017-0155  
A.C. No. 48-00732-426371

Mine: Belle Ayr Mine

Docket No. PENN 2016-0142  
A.C. No. 36-05018-403227

Mine: Cumberland Mine

Docket No. PENN 2016-0186  
A.C. No. 36-05018-405519

Mine: Cumberland Mine

Docket No. PENN 2016-0187  
A.C. No. 36-05018-405519

Mine: Cumberland Mine

Docket No. PENN 2016-0250  
A.C. No. 36-05018-410385

Mine: Cumberland Mine

Docket No. PENN 2016-0254  
A.C. No. 36-05018-412007

Mine: Cumberland Mine

Docket No. PENN 2016-0265  
A.C. No. 36-05018-412753

Mine: Cumberland Mine

Docket No. PENN 2016-0266  
A.C. No. 36-05018-412753

Mine: Cumberland Mine

Docket No. PENN 2016-0313  
A.C. No. 36-05018-415157

Mine: Cumberland Mine

Docket No. PENN 2016-0315  
A.C. No. 36-05018-417506

Mine: Cumberland Mine

Docket No. PENN 2017-0001  
A.C. No. 36-05018-419879

Mine: Cumberland Mine

Docket No. PENN 2017-0019  
A.C. No. 36-05018-422195

Mine: Cumberland Mine

DICKENSON-RUSSELL COAL  
COMPANY;

Docket No. PENN 2017-0084  
A.C. No. 36-05018-426549

Mine: Cumberland Mine

Docket No. VA 2016-0223  
A.C. No. 44-02277-416614

Mine: Moss No. 3 Plant

Docket No. VA 2017-0008  
A.C. No. 44-05311-419098

Mine: McClure River Plant

EMERALD COAL RESOURCES, LP;

Docket No. PENN 2016-0137  
A.C. No. 36-05466-402236

Mine: Emerald Mine No. 1

Docket No. PENN 2016-0138  
A.C. No. 36-05466-402236

Mine: Emerald Mine No. 1

Docket No. PENN 2016-0180  
A.C. No. 36-05466-404377

Mine: Emerald Mine No. 1

Docket No. PENN 2016-0189  
A.C. No. 36-05466-406608

Mine: Emerald Mine No. 1

Docket No. PENN 2016-0190  
A.C. No. 36-05466-407666

Mine: Emerald Mine No. 1

KINGSTON MINING, INC.;

Docket No. WEVA 2015-1034  
A.C. No. 46-08625-391848

Mine: Kingston No. 1

Docket No. WEVA 2015-1035  
A.C. No. 46-08625-391848

Mine: Kingston No. 1

Docket No. WEVA 2016-0539  
A.C. No. 46-08625-415185

Mine: Kingston No. 1

Docket No. WEVA 2016-0587  
A.C. No. 46-08625-417551

Mine: Kingston No. 1

Docket No. WEVA 2016-0588  
A.C. No. 46-08932-417553

Mine: Kingston No. 2

Docket No. WEVA 2017-0012  
A.C. No. 46-08932-419952

Mine: Kingston No. 2

Docket No. WEVA 2017-0181  
A.C. No. 46-04343-426593

Mine: Kingston Processing

KNOX CREEK COAL CORPORATION;

Docket No. VA 2016-0237  
A.C. No. 44-05236-417108

Mine: Coal Creek Prep Plant

MARFORK COAL COMPANY;

Docket No. WEVA 2016-0114  
A.C. No. 46-08315-395962

Mine: Brushy Eagle

Docket No. WEVA 2016-0115  
A.C. No. 46-08315-395962

Mine: Brushy Eagle

Docket No. WEVA 2016-0117  
A.C. No. 46-09091-395966

Mine: Horse Creek Eagle

Docket No. WEVA 2016-0235  
A.C. No. 46-08315-402480

Mine: Brushy Eagle

Docket No. WEVA 2016-0252  
A.C. No. 46-08625-403276

Mine: Kingston No. 1

Docket No. WEVA 2016-0362  
A.C. No. 46-08625-405568

Mine: Kingston No. 1

Docket No. WEVA 2016-0363  
A.C. No. 46-08932-405572

Mine: Kingston No. 2

Docket No. WEVA 2016-0411  
A.C. No. 46-08625-407843

Mine: Kingston No. 1

Docket No. WEVA 2016-0412  
A.C. No. 46-08932-407846

Mine: Kingston No. 2

Docket No. WEVA 2016-0473  
A.C. No. 46-08625-410448

Mine: Kingston No. 1

Docket No. WEVA 2016-0474  
A.C. No. 46-08932-410451

Mine: Kingston No. 1

Docket No. WEVA 2016-0509  
A.C. No. 46-08625-412788

Mine: Kingston No. 1

Docket No. WEVA 2016-0510  
A.C. No. 46-08932-412791

Mine: Kingston No. 2

Docket No. WEVA 2016-0537  
A.C. No. 46-08932-415188

Mine: Kingston No. 2

Docket No. WEVA 2016-0288  
A.C. No. 46-08315-404630

Mine: Brushy Eagle

Docket No. WEVA 2016-0289  
A.C. No. 46-08315-404630

Mine: Brushy Eagle

Docket No. WEVA 2016-0291  
A.C. No. 46-09048-404635

Mine: Slip Ridge Cedar Grove Mine

Docket No. WEVA 2016-0292  
A.C. No. 46-09091-404637

Mine: Horse Creek Eagle

Docket No. WEVA 2016-0394  
A.C. No. 46-09048-407030

Mine: Slip Ridge Cedar Grove Mine

Docket No. WEVA 2016-0395  
A.C. No. 46-09091-407031

Mine: Horse Creek Eagle

Docket No. WEVA 2016-0396  
A.C. No. 46-09091-407031

Mine: Horse Creek Eagle

Docket No. WEVA 2016-0445  
A.C. No. 46-08315-408818

Mine: Brushy Eagle

Docket No. WEVA 2016-0457  
A.C. No. 46-08315-409549

Mine: Brushy Eagle

Docket No. WEVA 2016-0458  
A.C. No. 46-09048-409554

Mine: Slip Ridge Cedar Grove Mine

Docket No. WEVA 2016-0492  
A.C. No. 46-09048-411991

Mine: Slip Ridge Cedar Grove Mine

Docket No. WEVA 2016-0493  
A.C. No. 46-09048-411991

Mine: Slip Ridge Cedar Grove Mine

Docket No. WEVA 2016-0494  
A.C. No. 46-09091-411993

Mine: Horse Creek Eagle

Docket No. WEVA 2016-0495  
A.C. No. 46-09092-411994

Mine: Allen Powellton Mine

Docket No. WEVA 2016-0533  
A.C. No. 46-08315-414427

Mine: Brushy Eagle

Docket No. WEVA 2016-0535  
A.C. No. 46-09092-414435

Mine: Allen Powellton Mine

Docket No. WEVA 2016-0536  
A.C. No. 46-09092-414435

Mine: Allen Powellton Mine

Docket No. WEVA 2016-0538  
A.C. No. 46-09091-414434

Mine: Horse Creek Eagle

Docket No. WEVA 2016-0573  
A.C. No. 46-09048-416634

Mine: Slip Ridge Cedar Grove Mine

Docket No. WEVA 2016-0574  
A.C. No. 46-09091-416636

Mine: Horse Creek Eagle

Docket No. WEVA 2016-0575  
A.C. No. 46-09091-416668

Mine: Horse Creek Eagle

Docket No. WEVA 2017-0006  
A.C. No. 46-08315-419121

Mine: Brushy Eagle

Docket No. WEVA 2017-0008  
A.C. No. 46-09048-419129

Mine: Slip Ridge Cedar Grove

Docket No. WEVA 2017-0009  
A.C. No. 46-09091-419131

Mine: Horse Creek Eagle

Docket No. WEVA 2017-0010  
A.C. No. 46-09091-419131

Mine: Horse Creek Eagle

Docket No. WEVA 2017-0049  
A.C. No. 46-08315-421486

Mine: Brushy Eagle

Docket No. WEVA 2017-0107  
A.C. No. 46-08315-423681

Mine: Brushy Eagle

Docket No. WEVA 2017-0149  
A.C. No. 46-08837-425730

Mine: Coon Cedar Grove Mine

PARAMOUNT COAL COMPANY;

Docket No. VA 2016-0128  
A.C. No. 44-07223-404619

Mine: Deep Mine 41



Docket No. VA 2016-0205  
A.C. No. 44-06929-414196

Mine: Deep Mine No. 26

Docket No. VA 2016-0206  
A.C. No. 44-07223-414198

Mine: Deep Mine No. 41

Docket No. VA 2016-0221  
A.C. No. 44-06929-416391

Mine: Deep Mine No. 26

Docket No. VA 2016-0222  
A.C. No. 44-07223-416392

Mine: Deep Mine No. 41

Docket No. VA 2016-0240  
A.C. No. 44-05270-418835

Mine: Toms Creek Complex

Docket No. VA 2016-0241  
A.C. No. 44-07322-418842

Mine: Cabin Ridge Surface Mine

Docket No. VA 2017-0003  
A.C. No. 44-06929-418838

Mine: Deep Mine No. 26

Docket No. VA 2017-0004  
A.C. No. 44-06929-418838

Mine: Deep Mine No. 26

Docket No. VA 2017-0005  
A.C. No. 44-07163-418839

Mine: 88 Strip

Docket No. VA 2017-0006  
A.C. No. 44-07223-418840

Mine: Deep Mine 41

POWER MOUNTAIN COAL COMPANY;

Docket No. VA 2017-0091  
A.C. No. 44-07322-427760

Mine: Cabin Ridge Surface Mine

REPUBLIC ENERGY (ELK RUN COAL  
COMPANY, INC.);

Docket No. WEVA 2016-0590  
A.C. No. 46-06880-417549

Mine: Power Mountain Processing

Docket No. WEVA 2016-0490  
A.C. No. 46-09163-411574

Mine: Roundbottom Powellton Deep Mine

Docket No. WEVA 2016-0570  
A.C. No. 46-09163-416179

Mine: Roundbottom Powellton Deep Mine

Docket No. WEVA 2016-0571  
A.C. No. 46-09163-416179

Mine: Roundbottom Powellton Deep Mine

SIDNEY COAL COMPANY;

Docket No. KENT 2017-0027  
A.C. No. 15-09724-420830

Mine: No. 1 Prep Plant

SPARTAN MINING COMPANY, INC.;

Docket No. WEVA 2016-0491  
A.C. No. 46-01544-411779

Mine: Road Fork No. 51 Mine

Respondents.

Docket No. WEVA 2016-0526  
A.C. No. 46-01544-414206

Mine: Road Fork No. 51 Mine

Docket No. WEVA 2016-0572  
A.C. No. 46-01544-416401

Mine: Road Fork No. 51 Mine

CUMBERLAND COAL RESOURCES,  
LLC,

Contestant

v.

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

Respondent

EMERALD COAL RESOURCES, LP,

Contestant

v.

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

Respondent

KINGSTON MINING, INC,

Contestant

v.

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

Respondent

Docket No. WEVA 2017-0005  
A.C. No. 46-01544-418846

Mine: Road Fork No. 51 Mine

Docket No. WEVA 2017-0189  
A.C. No. 46-01544-427766

Mine: Road Fork No. 51 Mine

#### CONTEST PROCEEDINGS

Docket No. PENN 2016-0122-R  
Order No. 9073630; 01/11/2016

Docket No. PENN 2016-0133-R  
Citation No. 9073699; 01/28/2016

Docket No. PENN 2016-0134-R  
Citation No. 9074040; 01/28/2016

Mine: Cumberland Mine  
Mine ID: 36-05018

Docket No. PENN 2016-0037-R  
Order No. 7030180; 09/22/2015

Mine: Emerald Mine No. 1  
Mine ID: 36-05466

Docket No. WEVA 2016-0059-R  
Citation No. 9053591; 09/22/2015

Mine: Kingston No. 1 Mine  
Mine ID: 46-08625

MARFORK COAL COMPANY, INC.,  
Contestant

v.

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

Docket No. WEVA 2016-0240-R  
Citation No. 9054035; 02/23/2016

Mine: Horse Creek Eagle  
Mine ID: 46-09091

**ORDER OF CONSOLIDATION**  
**DECISION APPROVING SETTLEMENT**  
**ORDER TO PAY**

Before: Judge Lesnick

These cases are before me upon ninety-seven petitions for the assessment of the civil penalties filed under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d), and six related Notices of Contest.

It is **ORDERED** that these cases are **CONSOLIDATED** for purposes of settlement, pursuant to Commission Procedural Rule 12. 29 C.F.R. § 2700.12.

The parties have filed a joint motion to approve global settlement of the above referenced dockets. The parties propose a reduction in the total penalty from \$1,606,312.00 as proposed by the Secretary to \$803,156.00. The settlement amounts for the 523 citations and orders were submitted by the parties in their joint motion, and Exhibits 1 and 2 attached thereto.

In support of the penalty reduction, the parties represent that the Respondents' parent organization, Alpha Natural Resources, Inc., is currently pursuing Chapter 11 bankruptcy protection.<sup>1</sup> The parties further represent as follows:

In exchange for this settlement, Alpha confirms that the Secretary will have an "Allowed Administrative Claim" in the Bankruptcy Case for the Agreed Amount that will be satisfied in full in accordance with the Plan. Consequently, the relief requested herein will resolve objections to the Administrative Claim in the Bankruptcy Case and the risks of litigation concerning the Affected Citations/Orders.

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act.

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<sup>1</sup> *In Re: Alpha Natural Resources, Inc.*, et al., Ch. 11, Case No. 15-33896-KRH (Bankr. E.D.V.A. filed Aug. 3, 2015).

**WHEREFORE**, the motion for approval of settlement and the motion to withdraw contest of Contest Docket Nos. PENN 2016-0122, PENN 2016-0133, PENN 2016-0134, PENN 2016-0037, WEVA 2016-0059, and WEVA 2016-0240, are **GRANTED**.

It is further **ORDERED** that Alpha Natural Resources, Inc., pay a penalty of \$803,156.00 within thirty (30) days of this order.<sup>2</sup>



Robert J. Lesnick  
Chief Administrative Law Judge

Distribution:

Eric Silkwood, Esq., Hardy & Pence, PLLC, 500 Lee Street East, Suite 701, Charleston, WV 25301

Dana Ferguson, Esq., U.S. Department of Labor, Office of the Solicitor, 2-1 12th Street South, Suite 401, Arlington, VA 22202

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<sup>2</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