

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004

JUL 30 2015

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

v.

CAM MINING, LLC,
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. KENT 2009-1008
A.C. No. 15-18911-182680

Mine: Mine #28

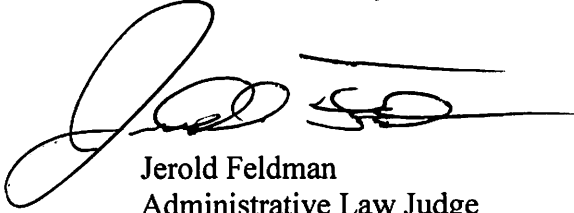
DECISION APPROVING SETTLEMENT
AND
ORDER TO PAY

Before: Judge Feldman

The captioned civil penalty proceeding is before me based upon a petition for assessment of civil penalty filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). 30 U.S.C. § 815(d). After this matter was assigned to me on February 4, 2010, further activity in this docket was held in abeyance pending Commission resolution of the novel question of the evidentiary requirements necessary for demonstrating a repeated flagrant violation under section 110(b)(2) of the Act, as amended by the Mine Improvement and New Emergency Response Act of 2006, 30 U.S.C. § 820(b)(2).

The parties have now filed a joint motion to approve settlement and dismiss this matter. The parties' agreed-upon settlement terms for the single order at issue, Order No. 8216882, include deleting the 110(b)(2) repeated flagrant designation and reducing the civil penalty from \$144,300.00 to \$40,000.00. Order No. 8216882 was issued for accumulations of float coal dust in a power box. The parties agree to delete the flagrant designation because the alleged predicate violations relied upon by the Secretary to support the flagrant violation were not issued for accumulations in power boxes and because the mine developed a cleaning program for power boxes in 2009 upon recognition that the existing program was insufficient. Having deleted the flagrant designation, the parties agree that the violation should be issued as a 104(d)(1) order.

I have considered the representations and documentation submitted in this matter and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the motion to approve settlement **IS GRANTED**, and pursuant to the parties' agreement, CAM Mining, LLC, **IS ORDERED** to pay the \$40,000.00 civil penalty within 30 days of this Order in satisfaction of the single order at issue.¹ Upon receipt of timely payment, the captioned matter **IS DISMISSED**. In reaching this conclusion, I have not considered paragraphs three and four of the motion because they are irrelevant.



Jerold Feldman
Administrative Law Judge

Distribution:

Mary Sue Taylor, Esq., U.S. Department of Labor, Office of the Solicitor, 618 Church Street,
Suite 230, Nashville, TN 37219-2440

Mark E. Heath, Esq., Spilman Thomas & Battle, PLLC, 300 Kanawha Blvd. East, P.O. Box 273,
Charleston, WV 25321-0273

/acp

¹ Payment 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. Please include the Docket No. and A.C. No. noted in the above caption on the check.