

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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AUG 14 2015

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

Petitioner

v.

CONSOLIDATION COAL CO. AND
MCELROY COAL CO.,

Respondents

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 2011-1314, et al.¹
A.C. No. 46-01318-249156

Mine: Robinson Run No. 95
Mine ID: 46-01318

Mine: Blacksville No. 2
Mine ID: 46-01968

Mine: Shoemaker
Mine ID: 46-01436

Mine: Loveridge No. 22
Mine ID: 46-01433

Mine: McElroy
Mine ID: 46-01437

ORDER OF CONSOLIDATION
AMENDED DECISION APPROVING GLOBAL SETTLEMENT²
ORDER TO DISMISS
ORDER TO PAY

Before: Judge Harner

These cases concern proposals for assessment of civil penalties filed pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §815(d) (“Act”), seeking civil penalty assessments for alleged violations of mandatory safety and health standards. This decision concerns 132 civil penalty dockets, including 1753 citations and orders, with proposed penalties totaling \$5,097,611.00. The parties have negotiated and submitted a proposed settlement that seeks to resolve all affected citations and orders contained in these 132 dockets. It is **ORDERED** that these cases are **CONSOLIDATED** for purposes of settlement.

¹ All Docket Numbers contained in this settlement are listed in Appendix A, attached hereto.

² This Decision is being amended solely to correct the A.C. No. for the lead docket, Docket No. WEVA 2011-1314; and the footnote number regarding payment information, now correctly reflected as footnote number 4.

On December 6, 2013, Murray Energy Company (“Murray”) acquired five northern West Virginia underground mines from CONSOL Energy, Inc. (“CONSOL”). The five mines that were acquired are Blacksville No. 2 (Mine ID: 46-01968), Loveridge (Mine ID: 46-01433), McElroy (Mine ID: 46-01437), Robinson Run (Mine ID: 46-01318), and Shoemaker (Mine ID: 46-01436) (collectively referred to as the “CONSOL Mines”). The Secretary issued citations/orders to the CONSOL Mines on or before December 6, 2013 and this global settlement resolves those citations/orders (“affected citations/orders”).

The Secretary attached three exhibits to his Motion to Approve Global Settlement. Exhibit 1 contains a summary of the 132 dockets included in this global settlement. Exhibit 2 contains a listing of all citations/orders in 110 fully resolved dockets. Exhibit 3 contains 22 dockets and the citations/orders in them that were issued on or before December 6, 2013. These 22 dockets also contain additional citations/orders issued after that date.³

The parties have agreed that the affected citations/orders shall be affirmed as set forth herein and that a civil penalty shall be assessed for each affected citation/order as set forth in Exhibit 2 and Exhibit 3. The facts surrounding each violation are set forth in the body of each affected citation/order, copies of which were attached as part of Exhibit A to the Secretary’s Petitions. The Secretary has considered the deterrent effect of such penalties taking into account that the CONSOL Mines were not owned or controlled by Murray when the affected citations/orders were issued. The violations were abated in good faith. The operator’s history of previous violations and size are contained in Exhibit A which was attached to the Petition for each case when filed by the Secretary. The Respondent agrees that final assessment of the agreed upon penalties will not adversely affect the operator's ability to continue in business. The gravity of each violation and the operator’s negligence are set forth in the body of each citation/order. In reaching this agreement on the total penalty amount, the parties reviewed and considered the allegations contained in the 1753 affected citations/orders which are contained in the 132 dockets at issue here and present the following in support of this Motion:

a. Negligence:

The parties have reviewed the affected citations/orders in the 132 Dockets affected by this global settlement. The affected citations/orders generally encompass violations that are often issued by MSHA in underground coal mines, including violations issued for the following standards: 30 C.F.R. §75.400 - combustible accumulations, 30 C.F.R. §75.202 - roof and rib control, 30 C.F.R. §75.370 and 30 C.F.R. §75.220 - ventilation plan and roof control plan, 30 C.F.R. §75.517 – electrical, 30 C.F.R. §75.360 –pre-shift examinations and 30 C.F.R. §75.1403 – safeguard notices, for example. The parties agree that the respondent will accept all affected citations/orders as issued, despite the existence of good faith factual and legal disputes. The parties agree however, that the Respondent shall pay civil penalties which, while lower than proposed, are commensurate with the respondent’s assertions in each of the dockets. Specifically, Respondent has raised issues concerning the designated level of negligence and the evidence the Secretary relied on to support high and moderate negligence designations for certain conditions. For certain citations/orders, Respondent asserts, for example, that

³ All of the citations/orders issued after December 6, 2013, have been fully resolved by Respondent and were the subject of Decisions Approving Partial Settlements.

management could not be in a position to know, nor could they have known, of conditions that existed for a short period of time, were in remote areas of the mine, had just occurred, or were not noted on examinations. The Secretary reviewed the evidence in light of Respondents' assertions. The parties agree that all affected citations/orders shall be affirmed as issued, regarding the negligence findings alleged, and that in some instances a modest reduction in penalty is appropriate.

b. Gravity:

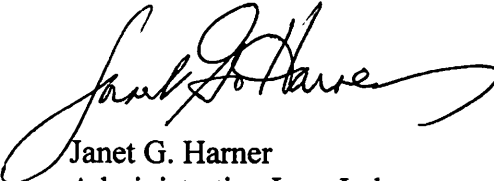
Gravity findings include the likelihood of injury or illness, the type of injury or illness, whether the gravity is significant and substantial and the number of persons affected. The parties reviewed the gravity findings in the 1753 affected citations/orders. As would be expected given the volume, Respondent raised factual issues in whole or in part with regard to the gravity findings alleged in many of the affected citations/orders. The Respondent raised factual and evidentiary concerns surrounding whether some of the conditions alleged would be reasonably likely or highly likely to lead to a permanently disabling or fatal injury and whether the number of persons identified would be affected by the hazard cited. Additionally, Respondent contends that there are several instances where the evidence does not fully support the likelihood of injury identified on the face of the citation or order. Those questions arise, for example, when evaluating the likelihood of miners to be permanently or fatally injured for minor or technical violations of the ventilation plan or roof control plan or whether an inadequate pre-shift examination would result in a fatal injury to one or more miners. Finally, based on many of the same factors, the Respondent raised concerns regarding the significant and substantial designation for certain hazards including whether the limited exposure of miners would contribute to a serious injury or death should normal mining operations continue. After reviewing the evidence presented by the Secretary and the Respondent, the parties agree that the affected citations/orders should be affirmed as issued. The Secretary has agreed to a reduction in penalty for some of the affected citations/orders in recognition of the defenses raised by the Respondent should the violations proceed to a hearing on the merits.

Finally, Order No. 8038342 contained in Docket No. WEVA 2012-995 and Order No. 7114564 contained in Docket No. WEVA 2013-800 were designated as flagrant violations for assessment purposes pursuant to § 110(a)(2) of the Mine Act. The Secretary agrees to remove that designation for the purposes of this settlement and to resolve those Orders at the maximum penalty of \$70,000.00 each.

I have considered the representations and documentation submitted, find that the settlement is 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. In deciding to approve this settlement agreement, I note the following: the violations of the Act set forth in the affected citations/orders were not committed while the mines were under Murray's control; the settlement will allow the parties to move forward and concentrate on future safety, health, and compliance in order to benefit the miners who work at these five mines; and the settlement will avoid protracted litigation that would occur if the cases were not resolved. While the Respondent is paying less than the amounts originally assessed by the Secretary, I deem that the amounts are reasonable under all of the circumstances herein.

The motion to approve settlement is **GRANTED**, all representations are accepted as set forth in the motion, and Respondent is hereby **ORDERED** to pay the Secretary of Labor the sum of **\$3,313,477.00** according to the following payment schedule:

Within 30 days of this decision, Respondent will pay \$1,000,000.00. Respondent will make a second payment of \$1,000,000.00 within 120 days of the date of this decision. Respondent will make a third payment of \$1,000,000.00 within 240 days of this decision. Respondent will make a fourth and final payment of \$313,477.00 on or before 360 days from the date of this decision.⁴ The parties further agree that if Respondent fails to make any payment in accordance with the terms herein, any remaining penalty due becomes payable in full immediately upon default. Upon the completion of the payment schedule, these cases are **DISMISSED**.



Janet G. Harner
Administrative Law Judge

Distribution:

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⁴ 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

Docket No.	Mine	Full / Partial	Number of Citations in Docket	Number of Citations Settling
WEVA 2011-1314	Harrison/Robinson	F	19	19
WEVA 2011-2248	Marion/Loveridge	F	14	14
WEVA 2011-900	Harrison/Robinson	F	11	11
WEVA 2012-1052	Marshall/McElroy	F	53	53
WEVA 2012-1115	Ohio/Shoemaker	F	3	3
WEVA 2012-1143	Marion/Loveridge	F	2	2
WEVA 2012-1193	Marshall/McElroy	F	1	1
WEVA 2012-1194	Marshall/McElroy	F	70	70
WEVA 2012-1256	Harrison/Robinson	F	2	2
WEVA 2012-1257	Harrison/Robinson	F	9	9
WEVA 2012-1258	Ohio/Shoemaker	F	3	3
WEVA 2012-1460	Marshall/McElroy	F	1	1
WEVA 2012-1489	Marshall/McElroy	F	1	1
WEVA 2012-1642	Harrison/Robinson	F	19	19
WEVA 2012-213	Harrison/Robinson	F	10	10
WEVA 2012-322	Marshall/McElroy	F	18	18
WEVA 2012-471	Marshall/McElroy	F	41	41
WEVA 2012-512	Marion/Loveridge	F	1	1
WEVA 2012-634	Marshall/McElroy	F	15	15
WEVA 2012-706	Harrison/Robinson	F	11	11
WEVA 2012-772	Marshall/McElroy	F	1	1
WEVA 2012-773	Marshall/McElroy	F	14	14
WEVA 2012-827	Harrison/Robinson	F	18	18
WEVA 2012-873	Marshall/McElroy	F	1	1
WEVA 2012-874	Marshall/McElroy	F	22	22
WEVA 2012-97	Marshall/McElroy	F	1	1
WEVA 2012-973	Marion/Loveridge	F	1	1
WEVA 2012-974	Marion/Loveridge	F	5	5
WEVA 2012-975	Marshall/McElroy	F	13	13
WEVA 2012-98	Marshall/McElroy	F	36	36
WEVA 2012-995	Marion/Loveridge	F	1	1
WEVA 2013-50	Harrison/Robinson	F	22	22
WEVA 2013-51	Marion/Loveridge	F	1	1
WEVA 2013-52	Marion/Loveridge	F	26	26
WEVA 2013-1008	Marion/Loveridge	F	1	1
WEVA 2013-1028	Marshall/McElroy	F	1	1
WEVA 2013-1029	Marshall/McElroy	F	40	40
WEVA 2013-1060	Mon/blacksville	F	10	10
WEVA 2013-1079	Marion/Loveridge	F	3	3

WEVA 2013-1080	Marion/Loveridge	F	3	3
WEVA 2013-1087	Harrison/Robinson	F	13	13
WEVA 2013-1088	Ohio/Shoemaker	F	17	17
WEVA 2013-1132	Marshall/McElroy	F	3	3
WEVA 2013-1133	Marshall/McElroy	F	53	53
WEVA 2013-1134	Harrison/Robinson	F	1	1
WEVA 2013-1156	Ohio/Shoemaker	F	12	12
WEVA 2013-1167	Harrison/Robinson	F	16	16
WEVA 2013-1201	Mon/blacksville	F	31	31
WEVA 2013-1213	Marion/Loveridge	F	39	39
WEVA 2013-1226	Marshall/McElroy	F	23	23
WEVA 2013-1251	Ohio/Shoemaker	F	5	5
WEVA 2013-1286	Harrison/Robinson	F	7	7
WEVA 2013-1287	Marion/Loveridge	F	2	2
WEVA 2013-1288	Marion/Loveridge	F	23	23
WEVA 2013-1291	Mon/blacksville	F	27	27
WEVA 2013-1340	Marshall/McElroy	F	16	16
WEVA 2013-397	Harrison/Robinson	F	2	2
WEVA 2013-451	Harrison/Robinson	F	1	1
WEVA 2013-501	Mon/blacksville	F	30	30
WEVA 2013-571	Marshall/McElroy	F	1	1
WEVA 2013-572	Marshall/McElroy	F	22	22
WEVA 2013-573	Ohio/Shoemaker	F	2	2
WEVA 2013-574	Ohio/Shoemaker	F	8	8
WEVA 2013-584	Harrison/Robinson	F	9	9
WEVA 2013-636	Marshall/McElroy	F	29	29
WEVA 2013-672	Marshall/McElroy	F	11	11
WEVA 2013-695	Ohio/Shoemaker	F	1	1
WEVA 2013-696	Ohio/Shoemaker	F	20	20
WEVA 2013-698	Ohio/Shoemaker	F	1	1
WEVA 2013-707	Harrison/Robinson	F	2	2
WEVA 2013-708	Harrison/Robinson	F	27	27
WEVA 2013-790	Marshall/McElroy	F	1	1
WEVA 2013-791	Marshall/McElroy	F	26	26
WEVA 2013-800	Ohio/Shoemaker	F	1	1
WEVA 2013-838	Mon/blacksville	F	61	61
WEVA 2013-883	Harrison/Robinson	F	16	16
WEVA 2013-929	Marshall/McElroy	F	27	27
WEVA 2013-936	Marion/Loveridge	F	3	3
WEVA 2013-956	Harrison/Robinson	F	14	14
WEVA 2013-960	Ohio/Shoemaker	F	8	8
WEVA 2014-9	Ohio/Shoemaker	F	3	3

WEVA 2014-25	Harrison/Robinson	F	17	17
WEVA 2014-29	Marion/Loveridge	F	1	1
WEVA 2014-38	Marion/Loveridge	F	24	24
WEVA 2014-73	Mon/blacksville	F	33	33
WEVA 2014-189	Harrison/Robinson	F	53	53
WEVA 2014-199	Harrison/Robinson	F	29	29
WEVA 2014-217	Ohio/Shoemaker	F	16	16
WEVA 2014-231	Marion/Loveridge	F	36	36
WEVA 2014-298	Mon/blacksville	F	10	10
WEVA 2014-352	Marshall/McElroy	F	2	2
WEVA 2014-353	Marshall/McElroy	F	32	32
WEVA 2014-540	Harrison/Robinson	F	10	10
WEVA 2014-542	Marion/Loveridge	F	2	2
WEVA 2014-566	Marshall/McElroy	F	2	2
WEVA 2014-623	Harrison/Robinson	F	2	2
WEVA 2014-698	Mon/blacksville	F	2	2
WEVA 2014-741	Marshall/McElroy	F	2	2
WEVA 2014-771	Mon/blacksville	F	1	1
WEVA 2014-799	Marion/Loveridge	F	5	5
WEVA 2014-800	Marion/Loveridge	F	1	1
WEVA 2014-801	Marshall/McElroy	F	1	1
WEVA 2014-895	Marion/Loveridge	F	2	2
WEVA 2014-912	Harrison/Robinson	F	2	2
WEVA 2014-1032	Marshall/McElroy	F	1	1
WEVA 2014-2041	Mon/blacksville	F	1	1
WEVA 2014-2042	Mon/blacksville	F	2	2
WEVA 2014-2040	Mon/blacksville	F	5	5
WEVA 2014-1044	Mon/blacksville	F	30	30
WEVA 2014-786	Mon/blacksville	F	30	30
WEVA 2012-1118	Mon/blacksville	F	17	17
WEVA 2012-937	Mon/blacksville	P	19	4
WEVA 2014-541	Marion/Loveridge	P	51	50
WEVA 2014-543	Ohio/Shoemaker	P	15	14
WEVA 2014-567	Marshall/McElroy	P	31	22
WEVA 2014-624	Harrison/Robinson	P	8	2
WEVA 2014-625	Ohio/Shoemaker	P	25	12
WEVA 2014-653	Marion/Loveridge	P	20	8
WEVA 2014-740	Marshall/McElroy	P	14	5
WEVA 2014-770	Harrison/Robinson	P	11	2
WEVA 2014-772	Mon/blacksville	P	25	14
WEVA 2014-784	Marion/Loveridge	P	46	24
WEVA 2014-808	Mon/blacksville	P	8	5

WEVA 2014-835	Marshall/McElroy	P	39	4
WEVA 2014-872	Ohio/Shoemaker	P	73	42
WEVA 2014-913	Harrison/Robinson	P	26	2
WEVA 2014-943	Mon/blacksville	P	61	24
WEVA 2014-1017	Harrison/Robinson	P	15	1
WEVA 2014-1033	Marshall/McElroy	P	31	4
WEVA 2014-1110	Mon/blacksville	P	19	2
WEVA 2014-1124	Harrison/Robinson	P	13	1
WEVA 2011-2408	Marion/Loveridge	P	5	2