

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

September 5, 2014

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

v.

CARL MOORE, employed by  
CALVARY COAL CORPORATION,  
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. VA 2012-356  
A.C. No. 44-06791-282333A

Mine: No. 1

**ORDER TO SHOW CAUSE TO CARL MOORE**

Before Judge Feldman:

This matter concerns section 104(d)(1) Order No. 8169789, issued to Calvary Coal Corporation (“Calvary”) on May 4, 2010, for an alleged violation of the mandatory standard in 30 C.F.R. § 75.400 that is attributable to an unwarrantable failure.<sup>1</sup> The cited violative condition concerns loose coal, coal dust, and float coal dust that accumulated along the entire distance of the #1 belt, measuring from a thin layer, up to five inches in depth. The order also cites accumulations from nine inches to 30 inches in depth at the #1 tailpiece. The order further notes that foreman Carl Moore stated that the accumulations had been present for two shifts, that they were obvious to the most casual observer, and that Moore knew of the existence of the accumulations.

The Mine Safety and Health Administration’s (“MSHA”) data retrieval system reflects that MSHA proposed a civil penalty of \$7,176.00 against Calvary for 104(d)(1) Order No. 8169789. Calvary did not contest the order.

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<sup>1</sup> Section 75.400 provides:

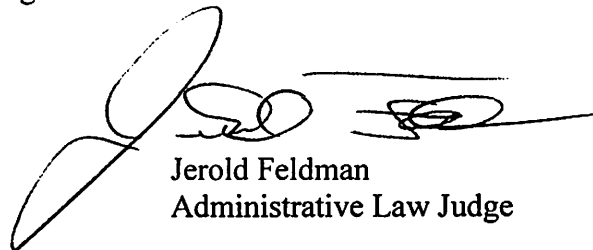
Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on diesel- powered and electric equipment therein.

On May 16, 2012, the Secretary filed an assessment for civil penalty against Carl Moore, seeking to impose a \$3,300.00 civil penalty for personal liability under section 110(c) of the Federal Mine Safety and Health Review Act ("Mine Act" or "the Act"), 30 U.S.C. § 820(c), for the violative condition cited in Order No. 8169789. Section 110(c) provides that supervisory mine personnel "who knowingly authorized, ordered, or carried out" a violation of a mandatory safety standard may be subject to personal liability. Absent strict liability, knowledge by mine supervisory personnel is always assumed for all violations that are attributable to an unwarrantable failure. Although Moore's acknowledgement that he knew about the cited accumulations, which is imputed to Calvary, may provide an adequate basis for an unwarrantable failure designation, his knowledge alone may not be adequate to impose personal liability under section 110(c), absent aggravated circumstances.

An individual is subject to personal liability under section 110(c) if he is uniquely "in a position to protect employee safety and health [and] fails to act on the basis of information" regarding the existence of a violative condition. *Kenny Richardson*, 3 FMSHRC 8, 16 (Jan. 1981), *aff'd on other grounds*, 689 F.2d 632 (6th Cir. 1982), cert. denied, 461 U.S. 928 (1983). The issue is whether Moore's "failure to act" in the face of his awareness of the cited accumulations constitutes the requisite "authoriz[ing], order[ing], or carr[ying] out" of the subject section 75.400 violation as contemplated by the personal liability provisions of section 110(c) of the Act.

In order to determine whether the Secretary has an adequate basis for seeking your personal liability in this case, it is necessary that you actively participate in these proceedings. However, to date, you have been unresponsive to my office's inquiries, in that you have not provided an adequate method of reaching you by telephone, mail, or email. For example, the telephone number of record, which was provided by Moore and furnished to the Solicitor, has repeatedly indicated that its mailbox is full. Thus, my office has been unable to reach you, and you have failed to contact my office.

Consequently, Carl Moore **IS ORDERED TO SHOW CAUSE within 21 days** of this Order why he should not be held in default and ordered to pay the \$3,300.00 civil penalty, as proposed by the Secretary. In order to avoid default, Carl Moore must contact my law clerk, Avery Peechatka, via telephone at 202-233-4010 or email at [apechatka@fmshrc.gov](mailto:apechatka@fmshrc.gov), and demonstrate his continued desire to participate in this matter by providing a mailing address and a telephone number or email address at which he can be successfully reached. **IT IS FURTHER ORDERED** that Moore must make himself available for participation in a telephone conference with the Judge and with J. Matthew McCracken, Esq., Counsel for the Secretary, which can be scheduled through contact with Mr. Peechatka.



Jerold Feldman  
Administrative Law Judge

**Distribution: (Regular and Certified Mail)**

**J. Matthew McCracken, Esq., U.S. Department of Labor, Office of the Solicitor, 1100 Wilson Boulevard, 22<sup>nd</sup> Floor West, Arlington, VA 22209-2247**

**Carl Moore, Calvary Coal Corporation, 16463 KY Rt. 122, Hi Hat, KY 41636**

**Carl Moore, Calvary Coal Corporation, 268 East Main Street, Prestonsburg, KY 041216**

**/acp**