

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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OCT 20 2014

AUSTIN POWDER COMPANY,
Contestant

v.

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

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

v.

AUSTIN POWDER COMPANY,
Respondent

CONTEST PROCEEDING

Docket No. PENN 2012-116-R
Citation No. 7040091;01/20/2012

River Hill Coal Co., Inc.
Mine ID 36-00884 A2708

CIVIL PENALTY PROCEEDING

Docket No. PENN 2012-172
A.C. No. 36-00884-281523 E24

Mine: River Hill Coal Co., Inc.

Docket No. PENN 2012-77
A.C. No. 36-09312-273298

Mine: Allegheny Strips

Docket No. CENT 2013-213
A.C. No. 23-02262-309819

Mine: Hume #1

Docket No. KENT 2013-274
A.C. No. 15-19451-307263 E24

Mine: S-9 Findlay Branch

Docket No. KENT 2012-1030
A.C. No. 15-17834-287578 E24

Mine: F-9 Prater Branch

Docket No. SE 2012-128
A.C. No. 01-03375-273206

Mine: Johnson Mine

Docket No. VA 2012-542
A.C. No. 44-07133-293119

Mine: No. 26 Strip

AMENDED ORDER TO CONSOLIDATE¹

Before: Judge Andrews

On August 15, 2014, the Secretary requested that all pending matters alleging violations of the Federal Mine Safety and Health Act of 1997 (Mine Act) against Austin Powder Company be consolidated for hearing and decision. The Secretary submits it is necessary to determine whether Austin Powder Company and its subsidiaries are unitary operators. Respondent objects to consolidation, arguing that the unitary operator issue must be determined on a case-by-case basis. However, Respondent previously moved for the above-cited proceedings to be stayed pending the outcome of PENN 2012-172, thus underscoring the common relationship in the issues presented in PENN 2012-172 and the other dockets. Indeed, Respondent states in its motions that “the issues will be identical to those being litigated in PENN 2012-172.”

Pursuant to 29 C.F.R. §2700.12, the undersigned may consolidate dockets for “proceedings that involve similar issues.” All eight dockets include the issue of whether Austin Powder Company and its subsidiaries constitute a unitary operator. Therefore, in the interest of judicial economy, the above captioned dockets are hereby **CONSOLIDATED** for hearing and decision. The parties are also hereby **ORDERED** to report any other Austin Powder Co. dockets that should also be consolidated due to the similar unitary operator issue.

All of the above-captioned dockets have been assigned to the undersigned. When filing additional submissions, parties must reference the undersigned and the lead docket, PENN 2012-172.



Kenneth R. Andrews
Administrative Law Judge

¹ A.C. No. 36-00884-281532 has been amended to A.C. No. 36-00884-281523. A.C. No. 36-0932-373298 has been amended to A.C. No. 36-09312-273298. Docket No. KENT 2012-274 has been amended to Docket No. KENT 2013-274.

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