

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 Pennsylvania Avenue NW, Suite 520N
Washington, D.C. 20004

April 9, 2015

ALPHA HIGHWALL MINING, LLC,	:	CONTEST PROCEEDINGS
and REVELATION ENERGY, LLC,	:	
successor in interest,	:	Docket No. KENT 2012-1207-R
Contestant,	:	Citation No. 8270168; 05/29/2012
	:	
v.	:	Docket No. KENT 2012-1208-R
	:	Citation No. 8270169; 05/29/2012
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 2013-142
Petitioner	:	A.C. No. 15-19621-301671
	:	
v.	:	
	:	
ALPHA HIGHWALL MINING, LLC,	:	Mine: Bucyrus Highwall Miner #76
and REVELATION ENERGY, LLC,	:	
successor in interest,	:	
Respondent	:	

ORDER AMENDING PLEADING
AND
ORDER HOLDING JOINT MOTION TO
APPROVE SETTLEMENT IN ABEYANCE

Appearances: J. Malia Lawson, Esq., U.S. Department of Labor, Office of the Solicitor, Nashville, Tennessee, on behalf of the Petitioner;
Charles F. Bellomy, Esq., Hardy Pence, PLLC, Charleston, West Virginia, on behalf of the Respondent.

Before: Judge Feldman

These consolidated civil penalty and contest proceedings are before me based on a petition for assessment of civil penalty filed by the Secretary of Labor (“Secretary”) under section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended (“the Act”), 30 U.S.C. § 815(d), against the Respondent, Alpha Highwall Mining, LLC (“Alpha Highwall”).

On March 11, 2015, the parties filed an amended joint motion to approve settlement naming Revelation Energy, LLC (“Revelation Energy”) as the successor in interest to Alpha Highwall. The parties aver that Revelation Energy has acquired Alpha Highwall’s subject highwall mine operation and any liability Alpha Highwall may have in these proceedings. I construe the parties’ March 11, 2015, joint motion as a motion to amend the pleadings. Good cause having been shown, **IT IS ORDERED** that Revelation Energy be added as a successor in interest in these proceedings.

The Secretary initially sought to impose a total civil penalty of \$90,000.00 for alleged violations of the mandatory safety standards in sections 30 C.F.R. § 77.1004(b) and 30 C.F.R. § 77.1713(a) that require the correction or posting of unsafe highwall conditions, and the daily inspection of highwalls for identification of hazardous conditions, respectively. The alleged violations were cited following a highwall failure that did not result in injuries. The Secretary initially attributed the alleged violations to unwarrantable failures.

A hearing was held on November 4, 2014, in Paintsville, Kentucky. At the hearing, the parties advised that, although the precise settlement terms had not been finalized, they had reached a comprehensive, but non-traditional, settlement agreement. Although not finalized, the settlement terms included a substantial reduction in civil penalty, as well as a significant expenditure for equipment to enhance the safety of mine personnel employed at Alpha Highwall’s surface mine sites. Consequently, the record was left open for the parties to submit a formal written motion for settlement approval.

The parties initially filed a joint motion to approve settlement and dismiss these matters on January 29, 2015. This settlement motion was superseded by the March 11, 2015, amended joint motion to approve settlement that clarified the real party in interest relationship between Alpha Highwall and Revelation Energy.

The settlement terms include a substantial reduction to the initial proposed civil penalty from \$90,000.00 to \$5,000.00. The substantial reduction in civil penalty is based, in large part, on the modification of 104(d)(1) Citation No. 8270168 and 104(d)(1) Order No. 8270169 to 104(a) citations, to reflect that the cited conditions were not attributable to unwarrantable failures.

In support of the removal of the unwarrantable designation in Citation No. 8270168, the Secretary does not dispute, for settlement purposes, the contention that instability of the highwall prior to its failure had been observed by the Alpha Highwall and that miners had been removed from danger prior to the issuance of the citation. In support of the removal of the unwarrantable designation in Order No. 8270169, the Secretary does not dispute, for settlement purposes, the contention that during the course of Alpha Highwall’s daily inspection, its highwall foremen had observed instability in the highwall, which enabled the foremen to remove miners from danger before the subject highwall failure occurred.

In further support of the substantial reduction in civil penalty, Revelation Energy, as the successor in interest, has agreed to implement improved safety measures at the mine site:

Alpha Highwall is no longer operating highwall miners. *Revelation Energy, LLC, has acquired any liability Alpha Highwall may have to the Secretary of Labor.* In addition to the payment of [the agreed-upon \$5,000.00 civil penalty], [Revelation Energy] by virtue of its acquisition [of Alpha Highwall's liability], [has] agreed to spend at least \$55,000 to purchase handheld two-way radios, cameras for the highwall miners, and shelters for the miners at [surface] mines operated by Revelation Energy [some of which were previously-operated by Alpha Highwall]. The handheld radios will be provided to the miners who work at the [surface] mines and the cameras and shelters will be installed on the highwall miners operated by Revelation Energy. [Revelation Energy] has agreed to purchase this equipment, and to install the equipment, at the mines by July 15, 2015. By this date, [Revelation Energy] has also agreed to provide the Secretary with receipts showing that the equipment was purchased. [Revelation Energy] has also agreed to update its ground control plan to specify that the equipment will be purchased and installed by July 15, 2015, and that the equipment will be maintained in good working order thereafter.

Jt. Mot. to Approve Settlement, at 2 (Mar. 11, 2015).

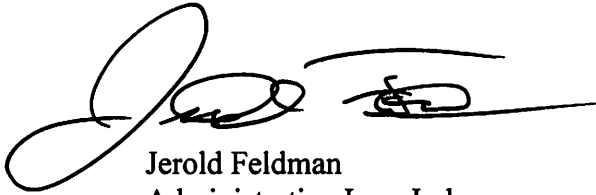
The March 11, 2015, joint settlement motion noted that “Revelation Energy, LLC agrees to carry out the terms of this settlement agreement.” *Id.* at 3. The joint settlement motion was signed by Charles F. Bellomy, counsel for both Alpha Highwall and Revelation Energy. *Id.* at 6.

I have considered the representations and documentation submitted in this matter and I conclude that the proffered settlement terms, when performed by Revelation Energy, will be appropriate for approval under the criteria set forth in Section 110(i) of the Act. In tentatively approving the parties' settlement terms, I have deferred to the Secretary's judgment that the installation of the subject equipment will materially enhance the safety of miners employed at Revelation Energy's surface mines.

ORDER

In view of the above, as the terms of this settlement agreement are unconventional, in order to ensure compliance, **IT IS ORDERED** that the approval of the parties' settlement agreement **IS HELD IN ABEYANCE**. Approval of the parties' settlement agreement is contingent upon documented compliance by Revelation Energy, on or before July 15, 2015, of the acquisition and installation of the subject equipment specified in the parties' settlement terms, as well as the required modification of Revelation Energy's ground control plan.

IT IS FURTHER ORDERED that upon relevant satisfaction of the settlement terms the parties shall file, **on or before August 26, 2015**, a joint motion to approve their settlement agreement and to dismiss these matters.

A handwritten signature in black ink, appearing to read 'Jerold Feldman', with a long horizontal line extending to the right.

Jerold Feldman
Administrative Law Judge

Distribution: (Regular and Certified Mail)

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