

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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January 4, 2011

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2007-139
Petitioner,	:	A.C. No. 11-02752-113419
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	:	Docket No. LAKE 2008-79
	:	A.C. No. 11-02752-131664-01
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	:	Docket No. LAKE 2008-41
	:	A.C. No. 11-02752-129287-05
	:	
	:	Docket No. LAKE 2008-84
	:	A.C. No. 11-02752-131664-06
	:	
	:	Docket No. LAKE 2008-122
	:	A.C. No. 11-02752-133868-05
	:	
v.	:	Docket No. LAKE 2008-237
	:	A.C. No. 11-02752-139912-07
	:	
	:	Docket No. LAKE 2008-532
	:	A.C. No. 11-02752-153962-08
	:	
	:	Docket No. LAKE 2008-536
	:	A.C. No. 11-02752-153962-12
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	:	Docket No. LAKE 2008-537
	:	A.C. No. 11-02752-153962-13
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	:	Docket No. LAKE 2008-538
	:	A.C. No. 11-02752-153962-14
	:	
	:	Docket No. LAKE 2008-539
	:	A.C. No. 11-02752-153962-15
	:	
THE AMERICAN COAL COMPANY,	:	Docket No. LAKE 2008-42
Respondent.	:	A.C. No. 11-02752-129287-06
	:	
SECRETARY OF LABOR,	:	Docket No. LAKE 2008-43
MINE SAFETY AND HEALTH	:	A.C. No. 11-02752-129287-07

ADMINISTRATION (MSHA),	:	
Petitioner,	:	Docket No. LAKE 2008-81
	:	A.C. No. 11-02752-131664-03
	:	
	:	Docket No. LAKE 2008-145
	:	A.C. No. 11-02752-136300-08
	:	
	:	Docket No. LAKE 2008-533
	:	A.C. No. 11-02752-153962-09
v.	:	
	:	Docket No. LAKE 2008-534
	:	A.C. No. 11-02752-153962-10
	:	
	:	Docket No. LAKE 2008-535
	:	A.C. No. 11-02752-153962-11
THE AMERICAN COAL COMPANY,	:	
Respondent.	:	Mine: Galatia Mine

**DECISION AND ORDER**

Appearances: Travis Gosselin, Suzanne Dunne, Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois, for Petitioner; Marco Rajkovich, Noelle True, Rajkovich, Williams, Kilpatrick & True, PLLC, Lexington, Kentucky, for Respondent.

Before: Judge Miller

The Respondent requested a hearing on the citations, orders, and associated proposed penalties contained in these dockets in accordance with the provisions of section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (“Mine Act”) and 29 C.F.R. § 2700.50 et seq. The only citations that remain at issue in the above captioned dockets are for violations of safeguards. All other citations and orders contained in the dockets were resolved and an order approving the partial settlement was entered in each.

American Coal Company (“American” or “Respondent”) filed two separate motions for summary decision addressing the remaining citations and the validity of the underlying safeguards. On September 20, 2010, after a thorough review of the files and the briefs filed by the parties, I issued an Order Denying Respondent’s Motion for Summary Decision which addressed a number of the contested safeguards. A second Order Denying Respondent’s Motion for Summary Decision accompanies this decision and addresses the remaining safeguards. Both orders affirm the validity of the underlying safeguards. The parties have agreed that the remaining matters related to each citation can be addressed through stipulations. The stipulations allow for a final order to be issued so that the validity of the underlying safeguards can then be appealed.

I have reviewed the stipulations and explanations of the parties and agree that the modifications and proposed penalties contained in the stipulations are appropriate and the basis for issuing the final decisions in these cases. The stipulations are as follows:

1. The Federal Mine Safety and Health Review Commission has jurisdiction over this proceeding.
2. At all times relevant to these proceedings, American Coal's operations affected interstate commerce.
3. At all times relevant to these proceedings, American Coal owned and operated the Galatia Mine, which is located in Saline County, Illinois.
4. The Galatia Mine is an underground mine for the extraction of bituminous coal.
5. At all times relevant to these proceedings, the Galatia Mine was owned by American Coal Company.
6. Respondent produced 6,267,253 tons at all of its mines during the period January 1, 2009 to December 31, 2009.
7. Respondent had 1857 previous violations in the 15 month period ending February 18, 2007.
8. The subject citations were properly served upon an agent of Contestant.
9. Pending appellate review of the Judge's decision in this case on the validity of the safeguards, the determinations of gravity and negligence and the penalty amounts of the following citations are stipulated to by the parties as follows:<sup>1</sup>

The parties have also agreed through joint stipulation, to the following findings as to the gravity, negligence and penalty amount for each citation:

Docket No. LAKE 2007-139

This docket has a total of 16 violations assessed at \$44,612.00. All but two violations are subject to a partial settlement that has been entered. The remaining two citations are safeguards with total assessed penalties for \$5,246.00. The parties agree that the penalty amount for the safeguard citations should be \$4,814.00.

Citation No. 7491576: the parties agree that the citation remains unchanged with a proposed penalty of \$3,086.00.

Citation No. 7491342: the parties agree that due to the dispute over the gravity, the penalty is reduced from \$2,160.00 to \$1,728.00.

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<sup>1</sup> The remaining stipulations of the parties are incorporated into the findings and order that follow.

Docket No. LAKE 2008-41

This docket has 19 violations assessed at \$6,063.00. All but four violations are subject to a partial settlement that was previously ordered. The total assessed penalty for the remaining safeguards is \$1,051.00 and the proposed settlement amount is \$1,051.00.

Citation No. 6667302: the parties agree that the citation remains as issued with a proposed penalty of \$127.00.

Citation No. 6669738: the parties agree that the citation remains as issued with a proposed penalty of \$308.00.

Citation No. 7490537: the parties agree that the citation remains as issued with a proposed penalty of \$308.00.

Citation No. 7490540: the parties agree that the citation remains as issued with a proposed penalty of \$308.00.

Docket No. LAKE 2008-42

This docket has 20 violations assessed a total penalty of \$6,381.00. All but five violations are subject to a partial settlement that was previously ordered. The total assessed penalty for the remaining safeguards is \$1,530.00 and the proposed total penalty amount is \$1,530.00.

Citation No. 7490993: the parties agree that the citation remains as issued with a proposed penalty of \$334.00.

Citation No. 7490844: the parties agree that the citation remains as issued with a proposed penalty of \$285.00.

Citation No. 7490562: the parties agree that the citation remains as issued with a proposed penalty of \$334.00.

Citation No. 7490563: the parties agree that the citation remains as issued with a proposed penalty of \$334.00.

Citation No. 6668301: the parties agree that the citation remains as issued with a proposed penalty of \$243.00.

Docket No. LAKE 2008-43

This docket contains 18 violations assessed a total penalty of \$5,857.00. All but two violations are subject to a partial settlement order. The total assessed penalty for the remaining safeguards is \$570.00 and the penalty proposed by the parties is \$570.00.

Citation No. 6668322: the parties agree that the citation remains as issued with a proposed penalty of \$285.00.

Citation No. 6668325: the parties agree that the citation remains as issued with a proposed penalty of \$285.00.

Docket No. LAKE 2008-79

This docket contains 20 violations with a total assessed penalty of \$52,383.00. All but three of the violations are subject of a partial settlement order entered previously in this case. The remaining violations have a proposed assessment of \$7,801.00 and the parties agree that the amended penalty amount for these safeguards is \$3,047.00.

Citation No. 6667854: the parties agree to the fact of the violation but there is a dispute as to the gravity of the violation and therefore the penalty is from \$1,700.00 to \$1,360.00.

Citation No. 7490598: the parties agree that the negligence is reduced from moderate to low with a reduction in penalty from \$4,689.00 to \$1,052.00.

Citation No. 666811: the parties agree that the negligence of the citation should be changed from moderate to low with a reduction in the proposed penalty from \$1,412.00 to \$635.00.

Docket No. LAKE 2008-81

This docket contains 21 violations with a proposed assessment of \$61,247.00. All but two of the violations were resolved by partial settlement order. The total assessed penalty for the remaining safeguards is \$2,970.00 and the proposed amended penalty for the safeguards is \$2,376.00.

Citation No. 6666952: the parties agree that the violation is as set forth in the citation but there is a dispute as to the gravity of the violation and therefore the penalty is reduced from \$1,026.00 to \$821.00.

Citation No. 6667919: the parties agree that there is a dispute as to the gravity of the violation and therefore the proposed penalty is reduced from \$1,944.00 to \$1,555.00.

Docket No. LAKE 2008-84

This docket contains 12 violations with a total proposed penalty of \$3,103.00. All but one of the violations was resolved in a partial settlement. The remaining violation has a proposed assessment of \$285.00 and the Respondent has agreed to pay \$ 285.00 for the remaining violation.

Citation No. 6668128: the parties agree that the citation remains unchanged with a proposed penalty of \$285.00.

Docket No. LAKE 2008-122

This docket contains 20 violations with a total proposed penalty of \$6,426.00. All but four of the citations have been resolved by a partial settlement agreement. The remaining violations have a proposed penalty of \$1,074.00 and the Respondent has agreed to pay a penalty of \$1,074.00 for the violations.

Citation No. 7490888: the parties agree that the citation remains as issued with a proposed penalty of \$263.00.

Citation No. 7490889: the parties agree that the citation remains as issued with a proposed penalty of \$285.00.

Citation No. 7490890: the parties agree that the citation remains as issued with the proposed penalty of \$263.00.

Citation No. 6668512: the parties agree that the citation remains as issued with a proposed penalty of \$263.00.

Docket No. LAKE 2008-145

This docket contains 20 violations with a total proposed penalty of \$5,355.00. All but four of the citations were settled by agreement and an order for partial settlement has been entered. The remaining citations have a proposed penalty of \$1,052.00 and the Respondent has agreed to pay \$1,052.00 for the four violations.

Citation No. 6673223: the parties agree that the citation remains as issued with a proposed penalty of \$263.00.

Citation No. 6668599: the parties agree that the citation remains as issued with a proposed penalty of \$263.00.

Citation No. 6668169: the parties agree that the citation remains as issued with a proposed penalty of \$263.00.

Citation No. 6673811: the parties agree that the citation remains as issued with a proposed penalty of \$263.00.

Docket No. LAKE 2008-237

This docket contains 20 violations with a total proposed penalty of \$4,590.00. All but four of the violations have been resolved by a motion for partial settlement that has been previously ordered. The total assessed penalty for the four remaining safeguard violations is \$949.00 and the Respondent has agreed to pay \$949.00 for the violations.

Citation No. 6673822: the parties agree that the citation remains as issued with a proposed penalty of \$263.00.

Citation No. 6672946: the parties agree that the citation remains as issued with a proposed penalty of \$362.00.

Citation No. 6672947: the parties agree that the citation remains as issued with a proposed penalty of \$100.00.

Citation No. 6673246: the parties agree that the citation remains as issued with a proposed penalty of \$224.00.

Docket No. LAKE 2008-532

This docket contains 20 violations with a proposed penalty assessed at \$53,982.00. All but two of the violations have been resolved previously by a motion for partial settlement. The total assessed penalty for the remaining two safeguard violations is \$3,551.00. The proposed amended penalty for the violations is \$1,901.00

Citation No. 6673534: the parties agree that the violation occurred as set forth in the citation but there is a dispute as to the gravity of the violation. The proposed penalty is reduced from \$873.00 to \$698.00.

Citation No. 6673539: the parties agree that the negligence will be modified from moderate to low with a reduction in the proposed penalty from \$2,678.00 to \$1,203.00.

Docket No. LAKE 2008-533

This docket has 20 violations that were assessed a total penalty of \$ 30,707.00. All but two of the violations are subject to a previous order granting a partial settlement. The total assessed penalties for the remaining two safeguard violations is \$1,746.00 and the proposed amended amount is \$1,396.00 for the two violations.

Citation No. 6673547: the parties agree that the violation is as issued but that there is a dispute as to the gravity of the violation and therefore the parties have agreed to reduce the penalty from \$873.00 to \$698.00.

Citation No. 6673550: the parties agree that the violation is as issued but that there is a dispute as to the gravity of the violation and therefore the parties have agreed to a reduction in penalty from \$873.00 to \$698.00.

Docket No. LAKE 2008-534

This docket contains 20 violations with a total assessed penalty of \$45,361.00. All but three of the violations have been settled and are subject to a previous order. The total proposed penalty for the remaining three safeguard violations is \$12,667.00 and the amended proposed amount \$2,774.00.

Citation No. 6673581: the parties agree that the violation remains as issued but an element of the gravity is changed to “unlikely” and therefore the parties agree to a reduction in penalty from \$8,893.00 to \$1,796.00.

Citation No. 6673564: the parties agree that the violation remains as issued, but an element of the gravity is modified to “unlikely” with a reduction in penalty from \$2,901.00 to \$586.00.

Citation No. 6673568: the parties agree that the violation remains as issued but there are mitigating factors as to the negligence and it is modified from moderate to low with a reduction in penalty from \$873.00 to \$392.00.

Docket No. LAKE 2008-535

This docket contains 20 violations with a total assessed penalty of \$35,279.00. All but two violations have been settled and are subject to a previous order approving settlement. The penalty amount remaining for the two violations is \$3,774.00 and the Respondent has agreed to pay \$3,774.00 for the violations.

Citation No. 6674181: the parties agree that the citation remains as issued with a proposed penalty of \$2,901.00.

Citation No. 6673599: the parties agree that the citation remains as issued with a proposed penalty of \$873.00.

Docket No. LAKE 2008-536

This docket contains 11 violations assessed at \$27,473.00. All but one of the citations have been settled and are subject to a previous order approving settlement. The total assessed penalty for the remaining safeguard violation is \$3,996.00 and the proposed amended penalty is \$3,197.00.

Citation No. 6674210: the parties agree that the violation remains as issued but there is a dispute as to the gravity and therefore the parties agree in a reduction of penalty from \$3,996.00 to \$3,197.00.

Docket No. LAKE 2008-537

This docket contains 20 violations with a total assessed penalty of \$4,242.00. All but four of the violations were settled and are subject to a previous order approving settlement. The remaining four



violations are assessed a total penalty of \$738.00 and Respondent has agreed to pay \$738.00 for those violations.

Citation No. 6673300: the parties agree that the citation remains as issued with a proposed penalty of \$207.00.

Citation No. 6673286: the parties agree that the citation remains as issued with a proposed penalty of \$207.00.

Citation No. 6673913: the parties agree that the citation remains as issued with a proposed penalty of \$162.00.

Citation No. 6673926: the parties agree that the citation remains as issued with a proposed penalty of \$162.00.

Docket No. LAKE 2008-538

This docket contains 19 violations with a total penalty assessed at \$7,271.00. All but two citations are settled and subject to a previous order approving settlement. The remaining two violations have a proposed total assessed penalty of \$324.00 and the Respondent has agreed to pay \$324.00 for those violations.

Citation No. 6672815: the parties agree that the citation remains as issued with a proposed penalty of \$162.00. This citation was mistakenly addressed in Docket No. Lake 2008-539 in the settlement agreement but is properly included in this docket.

Citation No. 6674135: the parties agree that the citation remains as issued with a proposed penalty of \$162.00.

Docket No. LAKE 2008-539

This docket contains 8 violations with a proposed assessed penalty of \$7,271.00. All but one of the citations were settled and are the subject of a previous order approving settlement. The total assessed penalty for the remaining safeguard violation is \$162.00 and the Respondent has agreed to pay that amount for the violation.

Citation No. 6674186: the parties agree that the citation remains as issued with a proposed penalty of \$162.00.

I accept the representations and the modifications of the Secretary as set forth in the joint stipulations and issue this decision based upon those stipulations. I have considered the representations and documentation submitted, find that the modifications are reasonable and I conclude that the penalties proposed are appropriate under the criteria set forth in section 110(i) of the Act.

I incorporate into this decision, the order on summary decision that I issued on September 20, 2010, and the order on summary decision issued contemporaneously with this order. Those decisions explain the basis for accepting the safeguards as issued by MSHA, and with these stipulations, I reach a final decision on all matters related to these cases.

### **ORDER**

The total amount assessed for the safeguard citations at issue in these dockets is \$49,486.00. I **AFFIRM** each citation as set forth above and assess the following penalties:

Citation No. 7491576	\$3,086.00
Citation No. 7491342	\$1,728.00
Citation No. 6667302	\$127.00
Citation No. 6669738	\$308.00
Citation No. 7490537	\$308.00
Citation No. 7490540	\$308.00
Citation No. 7490993	\$334.00
Citation No. 7490844	\$285.00
Citation No. 7490562	\$334.00
Citation No. 7490563	\$334.00
Citation No. 6668301	\$243.00
Citation No. 6668322	\$285.00
Citation No. 6668325	\$285.00
Citation No. 6667854	\$1,360.00
Citation No. 7490598	\$1,052.00
Citation No. 6668111	\$635.00
Citation No. 6666952	\$821.00
Citation No. 6667919	\$1,555.00
Citation No. 6668128	\$285.00
Citation No. 7490888	\$263.00
Citation No. 7490889	\$285.00
Citation No. 7490890	\$263.00
Citation No. 6668512	\$263.00
Citation No. 6673223	\$263.00
Citation No. 6668599	\$263.00
Citation No. 6668169	\$263.00
Citation No. 6673811	\$263.00
Citation No. 6673822	\$263.00
Citation No. 6672946	\$362.00
Citation No. 6672947	\$100.00
Citation No. 6673246	\$224.00
Citation No. 6673534	\$698.00

Citation No. 6673539	\$1,203.00
Citation No. 6673547	\$698.00
Citation No. 6673550	\$698.00
Citation No. 6673581	\$1,796.00
Citation No. 6673564	\$586.00
Citation No. 6673568	\$392.00
Citation No. 6674181	\$2,901.00
Citation No. 6673599	\$873.00
Citation No. 6674210	\$3,197.00
Citation No. 6673300	\$207.00
Citation No. 6673286	\$207.00
Citation No. 6673913	\$162.00
Citation No. 6673926	\$162.00
Citation No. 6672815	\$162.00
Citation No. 6674135	\$162.00
Citation No. 6674186	\$162.00
<b>Total</b>	<b>\$31,014.00</b>

In addition to the penalties that were assessed in the decision approving partial settlement in each docket, The American Coal Company is hereby **ORDERED** to pay the Secretary of Labor the sum of \$31,014.00 for the 48 violations listed above, within 30 days of the date of this decision.

Margaret A. Miller  
Administrative Law Judge

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