

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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February 18, 2014

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

v.

OAK GROVE RESOURCES, LLC ,
Respondent

CIVIL PENALTY PROCEEDING

Docket No. SE 2012-416
A.C. No. 01-00851-285172

Mine: Oak Grove Mine

DECISION

Appearances: Jennifer Booth-Thomas, U.S. Department of Labor, Nashville, Tennessee,
on behalf of the Secretary of Labor

Patrick Dennison, Jackson Kelly, PLLC, Pittsburgh, Pennsylvania, on
behalf of Oak Grove Resources, LLC

Before: Judge Zielinski

This case is before me upon a Petition for Assessment of Penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The petition alleges that Oak Grove Resources, LLC ("Oak Grove"), is liable for four violations of the Secretary's Safety Standards for Underground Coal Mines, and proposes the imposition of penalties in the amount of \$125,100.00. A hearing was held in Birmingham, Alabama. The parties settled two citations prior to the hearing and a Decision Approving Partial Settlement was issued. At the hearing, the parties settled the two remaining citations, Order Nos. 8521202 and 8521203. Afterwards, the parties submitted a joint motion to approve settlement as instructed. For the reasons that follow, I impose civil penalties in the amount of \$88,125.00.

SETTLEMENT TERMS

The terms of the settlement are as follows:

Order No.	Proposed Penalty	Settlement Amount	Modifications/Explanations
8521202	\$70,000.00	\$44,062.00	The Respondent argues that the cited condition was not a violation of Section 75.400, and was not the result of an unwarrantable failure or high negligence on the part of Oak Grove. Further,

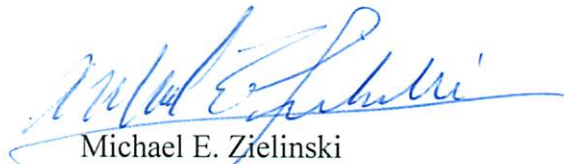
			the Respondent argues that the material cited consisted of wet sloppy material and was not combustible. Pre-shift mine examiners had noted conditions in pre-shift examinations and persons were assigned to complete work in the cited area. Additionally, the Respondent argues that maintenance had been conducted on shifts prior to the inspection. The Secretary proposes that the penalty be modified in light of the contested evidence and mitigating circumstances.
8521203	\$47,100.00	\$44,063.00	The Respondent argues that the cited condition was not a result of the operator's unwarrantable failure to comply with a mandatory safety standard because the pre-shift examination report included all of the potentially hazardous conditions that were in the area at issue in this violation. The Secretary proposes that the penalty be modified in light of the contested evidence and mitigating circumstances.
Total	\$117,100.00	\$88,125.00	

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act.

WHEREFORE, the motion to approve settlement is **GRANTED**.

ORDER

It is **ORDERED** that the operator pay a total penalty of \$88,125.00 within 30 days of this decision.¹



Michael E. Zielinski
Senior Administrative Law Judge

¹ 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.

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