

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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FEB 11 2014

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

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2013-674
A.C. No. 46-09086-314409

v.

BRODY MINING, LLC,
Respondent

Mine: Brody Mine No. 1

ORDER TO MODIFY
DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Steele

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The Secretary proposed penalties totaling \$71,400.00 for the violations alleged in Docket No. WEVA 2013-674. The parties have agreed to settle this docket for penalties totaling \$44,000.00.

The Secretary requests that Citation Nos. 3563916 and 3563917 be modified to 104(a) Citations with "Moderate" negligence. This modification is requested because at hearing because the Respondent would present evidence that in the experienced judgment of the day-shift foreman, the cited oil leaks on the #409 Fletcher Roof Bolter did not pose a hazard such that the machine had to be taken out of service immediately. Therefore the foreman's reasoned decision not to take the machine out of service did not constitute high negligence. The Respondent would further present evidence that the Roof Bolter was not likely to become hot enough to ignite the leaked oil, and it was not reasonably likely that the accumulation of oil would cause a mine fire or lead to serious injury. Based on this additional information and the modifications above, the Secretary has requested reductions in penalties in each Citation, from \$35,700.00 to \$22,000.00.

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

WHEREFORE, the motion for approval of settlement is **GRANTED**.

It is further **ORDERED** that the operator pay a penalty of \$44,000.00 within 30 days of this order.¹ Upon receipt of payment, this case is **DISMISSED**.

William S. Steele

William S. Steele
Administrative Law Judge

Distribution:

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/mzm

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