

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 15, 2014

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

v.

ELK RUN COAL COMPANY, INC.,
Respondent

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2014-485
A.C. No. 46-08553-341181

Mine: Black King I North Portal

ORDER ACCEPTING APPEARANCE
DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Lesnick

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 of Labor's Conference and Litigation Representative ("CLR") filed a notice of limited appearance with the penalty petition. It is **ORDERED** that the CLR be accepted to represent the Secretary. *Cyprus Emerald Res. Corp.*, 16 FMSHRC 2359 (Nov. 1994).

The CLR has filed a motion to approve settlement. A reduction in the penalties from \$11,807.00 to \$7,205.00 is proposed. The CLR also requests that Citation No. 8155239 be modified to reduce the likelihood of injury or illness from "reasonably likely" to "unlikely," and to delete the significant and substantial designation. The CLR justifies the modification by stating:

Respondent would have argued at hearing for modification of Citation No. 8155239's gravity designations because, Respondent claims, the condition cited was for the escapeway map at the section power center not showing the correct location of the mine faces, refuge alternative or the scsr storage locations, yet he further states that this escapeway map is located in close proximity to the current mine faces and all miners affected by the escapeway map

actually work and travel on the active section and know the current location. He also states that this map is always stored at the section power center and miners can actually see the refuge alternative and scsr storage cache while reviewing the map, which lowers the likelihood of this condition causing injury.

While the Secretary does not admit the relevancy or significance of the Respondent's arguments, the Secretary agrees to modify the citation. The remaining citations and penalties are unchanged.

Pursuant to 29 C.F.R. § 2700.1(b) and Fed. R. Civ. P. 12(f), I strike paragraphs three and four from the Secretary's Motion as immaterial and impertinent to the issues legitimately before the Commission.¹ The paragraphs incorrectly cite and interpret the case law and misrepresent the statute, regulations and Congressional intent regarding settlements under the Mine Act. Instead, I have evaluated the proposed settlement in accordance with sections 110(i) and 110(k) of the Act.

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. The settlement amounts are as follows:

<u>Citation No.</u>	<u>Proposed</u>	<u>Settlement</u>
8155239	\$6,458.00	\$1,856.00
9005633	\$3,405.00	\$3,405.00
9005634	\$1,944.00	\$1,944.00
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	\$11,807.00	\$7,205.00

¹ The Secretary's Motion for Decision and Order Approving Settlement reads in pertinent part:

3. In reaching this settlement, the Secretary has evaluated the value of the compromise, the likelihood of obtaining a still better settlement, the prospects of coming out better, or worse, after a full trial, and the resources that would need to be expended in the attempt. The Secretary has determined that the public interest and the effective enforcement and deterrent purposes of the Mine Act are best served by settling the citation as indicated above.
4. Consistent with the position the Secretary has taken before the Commission in The American Coal Company, LAKE 2011-13, the Secretary believes that the pleadings in this case and the above summary give the Commission an adequate basis for exercising its authority to review and approve the Secretary's settlement under Section 110(k) of the Mine Act, 30 U.S.C. § 820(k).

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

It is **ORDERED** that Citation No. 8155239 be **MODIFIED** to reduce the likelihood of injury or illness from “reasonably likely” to “unlikely,” and to delete the significant and substantial designation.

It is further **ORDERED** that the operator pay a total penalty of \$7,205.00 within thirty days of this order.² Upon receipt of payment, this case is **DISMISSED**.



Robert J. Lesnick
Chief Administrative Law Judge

Distribution:

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/tjr

² Payment should be sent to: Mine Safety & Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.