

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 NEW JERSEY AVENUE, NW, SUITE 9500  
WASHINGTON, DC 20001

April 27, 2011

MARFORK COAL COMPANY, INC., : CONTEST PROCEEDING  
Contestant :  
v. : Docket No. WEVA 2009-1367-R  
: Order No. 6623515; 04/02/2009  
SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH : Mine ID: 46-09091  
ADMINISTRATION (MSHA), : Mine: Horse Creek Eagle  
Respondent :  
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEVA 2008-386  
Petitioner : A.C. No. 46-08297-133173-02  
v. : Mine: White Queen  
MARFORK COAL COMPANY, INC. :  
Respondent : Docket No. WEVA 2008-717  
: A.C. No. 46-09092-138615-02  
: Mine: Allen Powellton Mine  
: Docket No. WEVA 2008-719  
: A.C. No. 46-09091-138614-02  
: Mine: Allen Powellton Mine  
: Docket No. WEVA 2008-720  
: A.C. No. 46-08837-138612  
: Mine: Coon Cedar Grove  
: Docket No. WEVA 2008-1094  
: A.C. No. 46-09048-146206-02  
: Mine: Slip Ridge Cedar Grove  
: Docket No. WEVA 2008-1126  
: A.C. No. 46-08837-146204  
: Mine: Coon Cedar Grove

: Docket No. WEVA 2008-1130  
: A.C. No. 46-09091-146208-02  
:  
: Mine: Horse Creek Eagle  
:  
: Docket No. WEVA 2008-1187  
: A.C. No. 46-08837-149678  
:  
: Mine: Coon Cedar Grove Mine  
:  
: Docket No. WEVA 2008-1391  
: A.C. No. 46-09193-153039  
:  
: Mine: Parker Peerless  
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: Docket No. WEVA 2008-1460  
: A.C. No. 46-09091-153033  
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: Mine: Horse Creek Eagle  
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: Docket No. WEVA 2008-1466  
: A.C. No. 46-08297-153023-02  
:  
: Mine: White Queen  
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: Docket No. WEVA 2009-9  
: A.C. No. 46-09193-162143  
:  
: Mine: Parker Peerless Mine  
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: Docket No. WEVA 2009-268  
: A.C. No. 46-08315-164914  
:  
: Mine: Brushy Eagle  
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: Docket No. WEVA 2009-270  
: A.C. No. 46-09092-164922-01  
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: Mine: Allen Powellton  
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: Docket No. WEVA 2009-271  
: A.C. No. 46-09092-164922-02  
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: Mine: Allen Powellton

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: Docket No. WEVA 2009-272  
: A.C. No. 46-09193-164927-01  
:  
: Mine: Parker Peerless Mine  
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: Docket No. WEVA 2009-273  
: A.C. No. 46-09193-164927-02  
:  
: Mine: Parker Peerless  
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: Docket No. WEVA 2009-452  
: A.C. No. 46-09048-167882  
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: Mine: Slip Ridge Cedar Grove Mine  
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: Docket No. WEVA 2009-453  
: A.C. No. 46-09193-167889  
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: Mine: Park Peerless Mine  
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: Docket No. WEVA 2009-459  
: A.C. No. 46-08315-167873  
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: Mine: Brushy Eagle  
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: Docket No. WEVA 2009-460  
: A.C. No. 46-08551-167877  
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: Mine: Marsh Fork Mine  
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: Docket No. WEVA 2009-552  
: A.C. No. 46-09193-170811-01  
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: Mine: Parker Peerless  
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: Docket No. WEVA 2009-553  
: A.C. No. 46-09193-170811-02  
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: Mine: Parker Peerless  
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: Docket No. WEVA 2009-625  
: A.C. No. 46-08315-170794  
:  
: Mine: Brushy Eagle

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: Docket No. WEVA 2009-626  
: A.C. No. 46-08297-170793  
:  
: Mine: Brushy Eagle  
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: Docket No. WEVA 2009-627  
: A.C. No. 46-08837-170800-01  
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: Mine: Coon Cedar Grove  
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: Docket No. WEVA 2009-628  
: A.C. No. 46-08837-170800-02  
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: Mine: Coon Cedar Grove  
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: Docket No. WEVA 2009-630  
: A.C. No. 46-09091-170805  
:  
: Mine: Horse Creek Eagle  
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: Docket No. WEVA 2009-631  
: A.C. No. 46-09092-170806  
:  
: Mine: Allen Powellton  
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: Docket No. WEVA 2009-718  
: A.C. No. 46-08315-173687  
:  
: Mine: Brushy Eagle  
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: Docket No. WEVA 2009-732  
: A.C. No. 46-09048-173692  
:  
: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2009-902  
: A.C. No. 46-08297-176257  
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: Mine: White Queen  
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: Docket No. WEVA 2009-903  
: A.C. No. 46-08315-176258  
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: Mine: Brushy Eagle  
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 : Docket No. WEVA 2009-904  
 : A.C. No. 46-08374-176259  
 :  
 : Mine: Marfork Processing  
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 : Docket No. WEVA 2009-906  
 : A.C. No. 46-08551-176261-02  
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 : Mine: Marsh Fork Mine  
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 : Docket No. WEVA 2009-907  
 : A.C. No. 46-08837-176262  
 :  
 : Mine: Coon Cedar Grove Mine  
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 : Docket No. WEVA 2009-909  
 : A.C. No. 46-09048-176264-02  
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 : Mine: Slip Ridge Cedar Grove  
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 : Docket No. WEVA 2009-910  
 : A.C. No. 46-09092-176267  
 :  
 : Mine: Allen Powellton  
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 : Docket No. WEVA 2009-1045  
 : A.C. No. 46-08297-178767  
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 : Mine: White Queen  
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 : Docket No. WEVA 2009-1046  
 : A.C. No. 46-08315-178768  
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 : Mine: Brushy Eagle  
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 : Docket No. WEVA 2009-1047  
 : A.C. No. 46-08374-178769  
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 : Mine: Marfork Processing  
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 : Docket No. WEVA 2009-1049  
 : A.C. No. 46-09048-178773-02  
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: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2009-1052  
: A.C. No. 46-08551-178770  
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: Mine: Marsh Fork  
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: Docket No. WEVA 2009-1054  
: A.C. No. 46-09092-178776  
:  
: Mine: Allen Powellton Mine  
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: Docket No. WEVA 2009-1381  
: A.C. No. 46-09193-181461  
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: Mine: Parker Peerless  
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: Docket No. WEVA 2009-1422  
: A.C. No. 46-09092-184531  
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: Mine: Allen Powellton Mine  
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: Docket No. WEVA 2009-1425  
: A.C. No. 46-08837-184525  
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: Mine: Coon Cedar Grove  
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: Docket No. WEVA 2009-1426  
: A.C. No. 46-09091-184530  
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: Mine: Horse Creek Eagle  
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: Docket No. WEVA 2009-1463  
: A.C. No. 46-08551-184520  
:  
: Mine: Marsh Fork  
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: Docket No. WEVA 2009-1464  
: A.C. No. 46-09048-184528  
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: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2009-1693  
: A.C. No. 46-09193-187356

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: Mine: Parker Peerless  
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: Docket No. WEVA 2009-1797  
: A.C. No. 46-09048-190388  
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: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2009-1799  
: A.C. No. 46-09193-190395  
:  
: Mine: Parker Peerless  
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: Docket No. WEVA 2009-1881  
: A.C. No. 46-09048-193231  
:  
: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2009-1885  
: A.C. No. 46-08297-193226  
:  
: Mine: White Queen  
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: Docket No. WEVA 2009-1886  
: A.C. No. 46-08315-193227  
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: Mine: Brushy Eagle  
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: Docket No. WEVA 2009-1887  
: A.C. No. 46-08551-193229  
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: Mine: Marsh Fork  
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: Docket No. WEVA 2010-36  
: A.C. No. 46-08551-197139  
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: Mine: Marsh Fork  
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: Docket No. WEVA 2010-39  
: A.C. No. 46-09048-197153  
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: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2010-40  
: A.C. No. 46-09193-197159

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: Mine: Parker Peerless  
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: Docket No. WEVA 2010-59  
: A.C. No. 46-09091-197155  
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: Mine: Horse Creek Eagle  
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: Docket No. WEVA 2010-99  
: A.C. No. 46-08315-197136  
:  
: Mine: Brushy Eagle  
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: Docket No. WEVA 2010-100  
: A.C. No. 46-09092-197156  
:  
: Mine: Allen Powellton  
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: Docket No. WEVA 2010-163  
: A.C. No. 46-08315-200289  
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: Mine: Brushy Eagle  
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: Docket No. WEVA 2010-164  
: A.C. No. 46-08374-200290  
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: Mine: Marfork Processing  
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: Docket No. WEVA 2010-165  
: A.C. No. 46-08551-200293  
:  
: Mine: Marsh Fork  
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: Docket No. WEVA 2010-166  
: A.C. No. 46-09048-200301  
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: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2010-325  
: A.C. No. 46-09193-203774  
:  
: Mine: Parker Peerless  
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: Docket No. WEVA 2010-370



: A.C. No. 46-08551-203767  
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: Mine: Marsh Fork  
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: Docket No. WEVA 2010-371  
: A.C. No. 46-09048-203769  
:  
: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2010-372  
: A.C. No. 46-09091-203770  
:  
: Mine: Horse Creek Eagle  
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: Docket No. WEVA 2010-373  
: A.C. No.46-09092-203771-01  
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: Mine: Allen Powellton  
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: Docket No. WEVA 2010-374  
: A.C. No. 46-09092-203771-02  
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: Mine: Allen Powellton  
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: Docket No. WEVA 2010-513  
: A.C. No. 46-08315-206643  
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: Mine: Brushy Eagle  
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: Docket No. WEVA 2010-514  
: A.C. No. 46-08551-206645  
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: Mine: Marsh Fork  
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: Docket No. WEVA 2010-516  
: A.C. No. 46-09048-206650  
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: Mine: Slip Ridge Cedar Grove  
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: Docket No. WEVA 2010-518  
: A.C. No. 46-09091-206651-02  
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: Mine: Horse Creek Eagle  
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: Docket No. WEVA 2010-519

: A.C. No. 46-09092-206652  
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 : Mine: Allen Powellton  
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 : Docket No. WEVA 2010-586  
 : A.C. No. 46-09048-208972  
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 : Mine: Slip Ridge Cedar Grove  
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 : Docket No. WEVA 2010-587  
 : A.C. No. 46-09091-208974  
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 : Mine: Horse Creek Eagle  
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 : Docket No. WEVA 2010-616  
 : A.C. No. 46-09193-208978  
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 : Mine: Parker Peerless  
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 : Docket No. WEVA 2010-669  
 : A.C. No. 46-08315-208967  
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 : Mine: Brushy Eagle

**DECISION APPROVING SETTLEMENT**

Before: Judge Feldman

These captioned proceedings are before me based upon a petition for assessment of civil penalty filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). The Secretary has filed a motion to approve a comprehensive settlement agreement and to dismiss the 83 captioned dockets. A reduction in total civil penalty from \$784,659.00 to \$627,714.00 is proposed.

The specific settlement terms are as noted in the comprehensive settlement agreement appended to the electronic version of this decision approving settlement, and posted online at the Commission’s website: <http://www.fmshrc.gov>. The above captioned contest docket has been resolved by the terms of the comprehensive settlement agreement. The originally assessed and agreed upon civil penalties for each docket are as follows:

Docket No.	Originally Assessed Penalty	Proposed Settlement
WEVA 2008-386	\$425.00	\$425.00

WEVA 2008-717	\$1,009.00	\$610.00
WEVA 2008-719	\$499.00	\$499.00
WEVA 2008-720	\$722.00	\$615.00
WEVA 2008-1094	\$392.00	\$392.00
WEVA 2008-1126	\$1,752.00	\$1,171.00
WEVA 2008-1130	\$582.00	\$582.00
WEVA 2008-1187	\$263.00	\$263.00
WEVA 2008-1391	\$968.00	\$688.00
WEVA 2008-1460	\$1,457.00	\$1,457.00
WEVA 2008-1466	\$392.00	\$392.00
WEVA 2009-9	\$615.00	\$476.00
WEVA 2009-268	\$5,555.00	\$3,511.00
WEVA 2009-270	\$499.00	\$499.00
WEVA 2009-271	\$2,980.00	\$2,245.00
WEVA 2009-272	\$811.00	\$300.00
WEVA 2009-273	\$285.00	\$285.00
WEVA 2009-452	\$53,563.00	\$42,420.00
WEVA 2009-453	\$5,549.00	\$5,231.00
WEVA 2009-459	\$12,644.00	\$10,333.00
WEVA 2009-460	\$9,275.00	\$4,830.00
WEVA 2009-552	\$8,405.00	\$8,038.00
WEVA 2009-553	\$100.00	\$100.00
WEVA 2009-625	\$10,003.00	\$4,900.00
WEVA 2009-626	\$9,158.00	\$9,158.00
WEVA 2009-627	\$585.00	\$300.00
WEVA 2009-628	\$392.00	\$175.00
WEVA 2009-630	\$9,128.00	\$7,661.00
WEVA 2009-631	\$4,549.00	\$4,159.00
WEVA 2009-718	\$8,893.00	\$2,000.00
WEVA 2009-732	\$1,746.00	\$1,746.00

WEVA 2009-902	\$6,617.00	\$6,617.00
WEVA 2009-903	\$17,594.00	\$8,800.00
WEVA 2009-904	\$1,620.00	\$1,240.00
WEVA 2009-906	\$65,735.00	\$49,995.00
WEVA 2009-907	\$8,848.00	\$5,136.00
WEVA 2009-909	\$26,971.00	\$23,650.00
WEVA 2009-910	\$3,912.00	\$2,704.00
WEVA 2009-1045	\$2,282.00	\$2,282.00
WEVA 2009-1046	\$25,840.00	\$14,901.00
WEVA 2009-1047	\$460.00	\$460.00
WEVA 2009-1049	\$15,793.00	\$9,696.00
WEVA 2009-1052	\$35,577.00	\$29,608.00
WEVA 2009-1054	\$5,785.00	\$5,785.00
WEVA 2009-1381	\$30,176.00	\$24,472.00
WEVA 2009-1422	\$8,031.00	\$6,587.00
WEVA 2009-1425	\$1,002.00	\$818.00
WEVA 2009-1426	\$21,506.00	\$19,208.00
WEVA 2009-1463	\$2,901.00	\$2,901.00
WEVA 2009-1464	\$15,752.00	\$12,356.00
WEVA 2009-1693	\$1,597.00	\$1,597.00
WEVA 2009-1797	\$277.00	\$277.00
WEVA 2009-1799	\$76,599.00	\$59,650.00
WEVA 2009-1881	\$2,665.00	\$2,162.00
WEVA 2009-1885	\$127.00	\$127.00
WEVA 2009-1886	\$4,946.00	\$4,946.00
WEVA 2009-1887	\$38,345.00	\$34,036.00
WEVA 2010-36	\$4,329.00	\$4,329.00
WEVA 2010-39	\$2,442.00	\$2,442.00
WEVA 2010-40	\$10,761.00	\$9,844.00
WEVA 2010-59	\$12,392.00	\$11,203.00

WEVA 2010-99	\$6,956.00	\$5,078.00
WEVA 2010-100	\$16,894.00	\$16,056.00
WEVA 2010-163	\$3,143.00	\$1,700.00
WEVA 2010-164	\$2,138.00	\$1,846.00
WEVA 2010-165	\$13,583.00	\$12,572.00
WEVA 2010-166	\$6,628.00	\$5,971.00
WEVA 2010-325	\$21,442.00	\$21,442.00
WEVA 2010-370	\$5,158.00	\$5,158.00
WEVA 2010-371	\$3,419.00	\$2,746.00
WEVA 2010-372	\$100.00	\$100.00
WEVA 2010-373	\$2,473.00	\$2,473.00
WEVA 2010-374	\$3,888.00	\$3,888.00
WEVA 2010-513	\$9,302.00	\$3,353.00
WEVA 2010-514	\$6,918.00	\$5,901.00
WEVA 2010-516	\$8,472.00	\$8,472.00
WEVA 2010-518	\$9,912.00	\$7,330.00
WEVA 2010-519	\$17,450.00	\$15,659.00
WEVA 2010-586	\$4,229.00	\$4,229.00
WEVA 2010-587	\$2,369.00	\$2,369.00
WEVA 2010-616	\$24,885.00	\$22,113.00
WEVA 2010-669	\$11,222.00	\$5,968.00
<b>TOTAL</b>	<b>\$784,659.00</b>	<b>\$627,714.00</b>

I have considered the representations and documentation submitted in these matters 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**, and pursuant to the parties' agreement, Marfork Coal Company, Inc. **IS ORDERED** to pay the \$627,714.00 civil penalty within 30 days of this order in satisfaction of the 83 dockets at issue.<sup>1</sup> Upon receipt of timely payment, the captioned contest and civil penalty proceedings **ARE DISMISSED**.

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<sup>1</sup> 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. Please provide the Docket Nos. and A.C. Nos. noted in the above caption along with the check(s).

Jerold Feldman  
Administrative Law Judge  
*And for Judges Barbour, Bulluck, Gill, Lesnick, McCarthy,  
Melick, Moran, Paez, Rae, Sippel, and Weisberger*

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