

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001

May 12, 2009

TRI-STAR MINING, INC.,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. YORK 2007-76-R
v.	:	Citation No. 6604148; 07/09/2007
	:	
	:	Docket No. YORK 2007-77-R
SECRETARY OF LABOR,	:	Citation No. 6604149; 07/09/2007
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. YORK 2007-78-R
Respondent	:	Citation No. 6604150; 07/09/2007
	:	
	:	Docket No. YORK 2007-79-R
	:	Citation No. 6604621; 07/09/2007
	:	
	:	Docket No. YORK 2007-80-R
	:	Order No. 6604622; 07/09/2007
	:	
	:	Docket No. YORK 2007-81-R
	:	Order No. 7146873; 07/09/2007
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. YORK 2007-101
Petitioner	:	A.C. No. 18-00713-125178
	:	
v.	:	Docket No. YORK 2008-52
	:	A.C. No. 18-00713-131071
	:	
TRI-STAR MINING, INC.,	:	Docket No. YORK 2008-108
Respondent	:	A.C. No. 18-00713-138815
	:	
	:	Job # 3

**DECISION APPROVING SETTLEMENT**

Before: Judge Feldman

The captioned civil penalty and contest cases are before me based upon Petitions for Assessment of Civil Penalties filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(d) (“Mine Act”). These proceedings concern six alleged violations of the Secretary’s mandatory safety standards of Part 77, 30 C.F.R. Part 77, governing surface coal mines. The citations and orders citing the subject violations were issued

as a result of a Mine Safety and Health Administration (MSHA) investigation of an April 17, 2007, highwall accident at Tri-Staring Mining, Inc.'s ("Tri-Star's") surface facility. As a result of the accident, Dale Jones and Michael Wilt were fatally injured when they were exposed to a highwall collapse that occurred while they were operating equipment at the bottom of the pit.

The citations and orders in issue allege violations of 30 C.F.R § 77.1000 that requires the mine operator to establish a plan to insure highwall bank stability; 30 C.F.R. § 77.1006(a) that prohibits men from working near dangerous highwalls; 30 C.F.R. § 77.1713(a) that requires on-shift inspections for hazardous conditions; 30 C.F. R. § 77.1713(c) that requires the mine operator to maintain an inspection book noting the remedial action taken with respect to hazardous conditions noted during on-shift inspections; 30 C.F. R. § 77.1003 the requires the width and height of benches to be determined by the type of equipment in use; and 30 C.F. R. § 77.1004(a) that requires highwalls to be examined for hazards after every rain, freeze or thaw.

These proceedings were scheduled for hearing on July 21, 2009. On May 6, 2009, the Secretary filed a motion to approve a settlement agreement and to dismiss these proceedings. A reduction in civil penalty from \$185,324.00 to \$105,324 is proposed. The significant reduction in penalty apparently is based on the vagaries of litigation with respect to the extent that dangerous highwall conditions were foreseeable. In this regard, the parties have agreed that Order No. 6604622 concerning exposing miners to dangerous highwall conditions, and Order No. 6604148 concerning Tri-Star's failure to record hazardous highwall conditions in an on-shift examination book, shall be modified to 104(a) citations reflecting that the cited violations were not attributable to Tri-Star's unwarrantable failure.

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, 30 U.S.C. § 820(i). **WHEREFORE**, the motion for approval of settlement **IS GRANTED**, and **IT IS ORDERED** that the respondent pay a total civil penalty of \$105,324.00 in satisfaction of the six cited violations. Pursuant to the parties agreement, the \$105,324.00 civil penalty will be paid in twelve (12) monthly installments. The first monthly payment of \$8,777.00 is due on July 1, 2009, and shall be followed by monthly payments of \$8,777.00 on the first of each subsequent month, until the full amount of \$105,324.00 has been paid and received.

Payment shall be sent to the U.S. Department of Labor, Mine Safety and Health Administration, P.O. Box 790390, St. Louis, Missouri, 63179. Each check shall be made payable to the U.S. Department of Labor/MSHA. Failure to make any installment payment within 30 days of the due date will result in the remaining balance of the \$105,324.00 civil penalty becoming due and payable immediately. Upon timely receipt of the entire \$105,324.00 civil penalty, the captioned contest and civil penalty matters **ARE DISMISSED**.

Jerold Feldman  
Administrative Law Judge

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