

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

July 11, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 96-290
Petitioner	:	A.C. No. 15-10753-03677
v.	:	
	:	Docket No. KENT 96-291
CLEAN ENERGY MINING, CO.,	:	A.C. No. 15-10753-03678
Respondent	:	
	:	Docket No. KENT 96-329
	:	A.C. No. 15-10753-03679
	:	
	:	Docket No. KENT 97-31
	:	A.C. No. 15-10753-03687
	:	
	:	No. 1 Mine

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, for Petitioner;
John T. Bonham, II, Esq., Jackson & Kelly, Charleston, West Virginia, for Respondent.

Before: Judge Hodgdon

These consolidated cases are before me on Petitions for Assessment of Civil Penalty filed by the Secretary of Labor, acting through her Mine Safety and Health Administration (MSHA), against Clean Energy Mining Company pursuant to section 105 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815. The petitions allege 30 violations of the Secretary's mandatory health and safety standards and seek penalties of \$14,698.00. For the reasons set forth below, I affirm three contested orders, approve the settled cases and assess penalties of \$11,851.00.

A hearing was held on March 11, 1997, in Pikeville, Kentucky. In addition, the parties submitted post-hearing briefs in these matters.

Settled Dockets

The parties settled all of the citations in Docket Nos. KENT 96-290, KENT 96-329 and KENT 97-31.¹ With regard to Docket No. KENT 96-290, the Respondent agreed to pay the proposed penalty for Citation No. 4023148; the Secretary agreed to modify Citation No. 4508816 to include the allegations in Citation No. 4508817 and to vacate Citation No. 4508817, and the Respondent agreed to pay the proposed penalty for Citation 4508816; and the Secretary agreed to modify Citation Nos. 4508818 and 4508819 by deleting the ~~Asignificant and substantial@~~ designations and the Respondent agreed to pay reduced penalties. (Tr. 5-7.)

Docket No. KENT 96-329 consists of 19 citations. The operator agreed to pay the proposed penalty for Citation Nos. 4036830, 4036831, 4036832, 4224951, 4036822, 4036823, 4036824, 4036825, 4036826, 4036827, 4036828, 4036829, 4224952 and 4509450. (Tr. 7-11.) The Secretary agreed to modify Citation No. 4224947 by reducing the number of people affected by the violation from ten to one and to reduce the penalty accordingly. (Tr. 9.) The Secretary agreed to modify Citation Nos. 4224948 and 4224950 by deleting the ~~Asignificant and substantial@~~ designations and to reduce the penalty. (Tr. 9-10.) Further, the Secretary agreed to modify Citation No. 4224949 by deleting the ~~Asignificant and substantial@~~ designation, but the penalty would remain as proposed. (Tr. 10.) Finally, the Secretary agree to vacate Citation No. 4509449. (Tr. 11.)

Docket No. KENT 97-31 consists of one citation. The Respondent agreed to pay the penalty as proposed. (Tr. 13.)

Lastly, in Docket No. KENT 96-291, the Secretary agreed to modify the degree of negligence in Citation No. 4516854² from ~~Amoderate@~~ to ~~Allow@~~ and in Citation No. 4592883 from ~~Allow@~~ to ~~Anone@~~ and the Respondent agreed to pay the penalties as originally proposed. (Tr. 16.) The remaining three orders in that docket were contested at the hearing.

After considering the parties representations, I concluded that the settlements were appropriate under the criteria set forth in section 110(i) of the Act, 30 U.S.C. ' 820(i), and approved the agreements. Their provisions will be carried out later in this decision.

Contested Orders

Background

¹ Docket No. KENT 97-30, originally scheduled to be heard with these cases, was severed from this proceeding at trial. (Tr. 14.)

² This citation is erroneously referred to as ~~ANo. 4506854~~" in the transcript.

On March 11, 1996, MSHA Inspector John P. Church went to the Clean Energy No. 1 Mine as part of a combined CDB³/AAA inspection. Specifically, that day he was inspecting the belt haulage system. He proceeded down the No. 1, or Aslope,@belt, which brings coal to the surface, to the No. 2 belt. The No. 2 belt is a short belt, approximately 80 feet long, and moves coal from the No. 3 belt to the No. 1 belt. The No. 3 belt is about 1600 feet long and brings coal from farther inside the mine.

His inspection resulted in the issuance of Order Nos. 4012619, concerning the No. 2 belt, 4012620, concerning the No. 3 belt, and 4023151, concerning the onshift examination of both belts. Order No. 4012619 alleges a violation of section 75.400 of the regulations, 30 C.F.R. ' 75.400,⁴ for:

Accumulations of coal dust, float coal dust, loose coal, oil cans (5 gal.) with oil residue observed inside, oil cans (5 gal.) with open lids and being approx. 2 full of oil, paper boxes, paper towels, aerosol cans containing WD-40 and other combustible materials were observed on, in[,] around and under the #2 belt conveyor. . . . These accumulations measured from 1 inch to 20 inches deep. Coal dust and float coal dust was observed in suspension. Accumulations of coal dust and float coal dust were observed inside the #2 belt conveyor starter box (575 volts AC). The belt was very black in color and dry at several locations.

³ A ACDB@inspection is Aa winter alert program that [MSHA] do[es] through the winter months to address mine ventilation controls, accumulations of coal dust, float coal dust and loose coal . . . rock dust application, methane liberation; things of that nature.@ (Tr. 26.)

⁴ Section 75.400 requires that: ACoal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials shall be cleaned up and not be permitted to accumulate in active workings or on electric equipment therein.@ This language is taken verbatim from section 304(a) of the Act, 30 U.S.C. ' 864(a).

The operator's belt conveyor examination records indicated that the #2 belt was O.K., this was inaccurate. The accumulations were observed from the head drive to the tail piece. This condition appears to have existed for several days.

The operator has been cited repeatedly for violations of 30 CFR 75.400 over numerous inspection quarters.

Other haulage belt conveyors have been cited in this mine repeatedly.

Several discussions have been held with mine management on violations cited of the same standard. These discussions were held during conferences of cited violations.

(Govt. Ex. 11.)

Order No. 4012620 also alleges a violation of section 75.400.⁵ It relates that:

Accumulations of coal dust, float coal dust, and loose coal with coal dust on surfaces of rock dusted areas were observed along the length of the #3 belt conveyor for a distance of approx. 1600 feet, from the head drive to the tail piece. The bottom rollers of the coal haulage belt conveyor were seen rolling in the materials observed and several bottom rollers were stuck and not rolling. The materials surrounding the rollers was [*sic*] warm to the touch. The belt was in operation when this condition was observed. The belt was very black in color and dry in all locations. The accumulations ranged from 1 inch to 26 inches in depth on both sides of the belt, along its length. There were accumulations of coal dust and float coal dust inside the #3 belt conveyor starter box (575 volt AC) that was energized.

The operator's belt conveyor examination records indicated that the #3 belt conveyor needed dusting by both the day shift and 2nd shift belt examiners (Curtis Adkins --1st shift and Doug Williamson -- 2nd shift).

The records were documented and signed by both belt examiners and countersigned by Charlie Morley -- Mine Foreman.

This condition has been reported on every production shift from 2/29/96 thru 3/8/96.

⁵ The order originally set out a violation of section 75.403, 30 C.F.R. ' 75.403, but was modified to allege section 75.400 on April 1, 1996.

The operator has been cited repeatedly for the violation of 30 CFR 75.403 over several inspection quarters.

Several discussions have been held with mine management on violations cited of the same standard. These discussions were held during conferences of cited violations.

(Govt. Ex. 12.)

Order No. 4023151 alleges a violation of section 75.362(b), 30 C.F.R. ' 75.362(b).⁶ It states:

An inadequate [*sic*] on shift examination for hazardous conditions along each belt conveyor haulage way where belt conveyors are operated are [*sic*] not being conducted at this mine. Hazardous conditions were observed along the #2 and #3 coal haulage belt conveyors. Excessive accumulations of combustible materials were seen and not adequately reported. The operators coal haulage belt conveyor record books indicated that conditions along the #2 belt were O.K. when they were not. See order #4012619. Conditions along the #3 belt conveyor were recorded as only needing rock dusting. Examination of the belts by M.S.H.A. revealed excessive accumulations of coal dust, float coal dust and loose coal. Several bottom rollers were observed stuck and others were rolling in loose coal and float coal dust, warm to the touch. See order \$4012620.

Hazardous roof and rib conditions were observed along the length of the #3 belt conveyor at several locations. The similar conditions documented (of just rock dusting) in the operator's records and other hazardous conditions that existed, were not adequately reported or the conditions corrected.

(Govt. Ex. 13.)

Findings of Fact and Conclusions of Law

Whether the company committed the violations alleged in these orders depends on whether the inspector's or the company's version of the facts is accepted. The testimony is almost literally black and white and determining who to believe was particularly difficult. However, after carefully reviewing the evidence, I find the inspector's testimony more credible and, therefore, conclude that the violations occurred as set out.

Concerning the No. 2 belt, Inspector Church testified that he observed

⁶ Section 75.362(b) provides, in pertinent part, that: "During each shift that coal is produced, a certified person shall examine for hazardous conditions along each belt conveyor haulageway where a belt conveyor is operated."@

excessive accumulations of coal dust, float coal dust and loose coal There were oil cans with some oil left inside of them with raw oil residue.

There was [sic] other combustible materials of paper boxes, paper towels, aerosol cans, which appeared to me to be a WD-40 can, things of that nature, which was [sic] along, around and under and on the Number 2 belt.

The deepest part of the accumulations was under the belt conveyor head drive, and I believe I measured it at approximately 20 inches at its deepest.

(Tr. 37.)

The inspector related that he witnessed the same conditions along the No. 3 belt. In addition, he observed several rollers that were stuck and not turning, and there was [sic] several rollers observed along the length of the belt that had been rolling and accumulations of coal dust and float coal dust. (Tr. 44.) He further stated that he used his hammer to rake loose coal and float coal dust out from around a couple or several rollers that had been, while the belt was running, rolling in loose coal and coal dust. And that material felt very warm to the touch. (Tr. 103.)

Inspector Church testified that the failure of the belt examiners to record the accumulations which he observed, and which, in his opinion, had been there for several shifts resulted in his issuing the order for inadequate shift examinations. He pointed out that the belt examiners book stated that the No. 2 belt was A.O.K. for every examination from February 29, 1997, through March 10, 1997, and that it stated only that the No. 3 belt Aneed dusted for the same period. (Govt. Ex. 14.)

The company's witnesses consisted of Mine Foreman Charles Morley, the two belt examiners, Curtis Adkins and Doug Williamson, and Section Foreman Arnold Coleman. Their testimony was to the effect that there were little or no accumulations around the belts and that what was present was non-combustible because it had been rock dusted.

Morley, who accompanied Church on the inspection, stated that the No. 2 belt entry Awas clean; pretty much clean. It was a little bit -- it was grayish and there was some coal, a little bit of spillage that had spilled at the tail piece, the slope belt, where the No. 2 belt dumps. There was probably maybe a ten-by-ten area, a ten-foot-by-ten-foot area where there was some coal that had come off the belt, probably two or three inches thick. Well, it was just small pieces of coal, which had came [sic] off the belt as it dumped, probably gravel size or smaller. (Tr. 128.) He opined that A[i]t looked like probably a couple hours at the most it had accumulated there. In less time, probably, but I would say probably a couple hours. (Tr. 129.)

Morley testified that along the No. 2 belt A[t]here was a light amount of float coal dust on top of rock dust, but it was just gray. It was not a black belt.@ (Tr. 131.) He asserted that A[t]he only thing that would be close to an accumulation was the little bit of coal that was at the head where it had spilled off that morning because it would have been cleaned or it was cleaned on the Friday shift, the last shift we run [sic] on Friday night.@ (Tr. 140.)

Williamson testified that, although he did not believe a hazard existed, he had indicated that the No. 3 belt line Aneed dusted@ in the examination book because Ait=s black. Any time a belt line is black, it requires dusting.@ (Tr. 170.) Adkins agreed that even though no hazard existed the No. 3 belt needed to be dusted. He did not agree, however, that the belt was Ablack.@ Both contended that there were no accumulations on either the No. 2 or the No. 3 belt lines.

Coleman=s section cleaned up the belt lines to abate the violations. He claimed that 99 percent of what they cleaned up was rock dust. He testified that his crew Awanted to know why we had to shovel that rock dust up just to put it back down again.@ (Tr. 210.) He denied seeing any accumulations of coal, loose coal or float coal dust.

Morley testified that he did not see Inspector Church take any measurements of accumulations along either belt line. He implied that the dust in the air, which Church had described as float coal dust, was rock dust from a trickle duster.⁷ However, even if the inspector did not take measurements, which I conclude that he did, but just estimated them, and even if the trickle duster was blowing a continuous supply of rock dust, it does not explain the stark contrast between the inspector=s and the company=s evidence.

There was some inconsistency in the company=s testimony, most notably whether the belts were black or gray, but the main reason that I find the inspector=s testimony credible is the company=s lack of response to his issuing the orders. If the belt lines really were as pristine as the company maintains, one would expect indications of outrage and indignation at the injustice of such allegations. Yet, according to the evidence, nothing at all was said to the inspector. No one said words to the effect of Ayou=re kidding,@ Awhat accumulations,@ Ashow me the accumulations@ or anything of that nature. The only company response in evidence was to assign a crew of seven men to clean-up the accumulations.

While I find that the company=s failure to challenge the orders at the time most striking, there are other reasons to believe the inspector. His testimony was corroborated by his notes, (Resp. Ex. A), and the orders themselves, which were made contemporaneous with the inspection and were very detailed. The company has advanced no motive for the inspector not to tell the truth, nor is there any indication in the record that he had some reason for making false accusations. Thus, I am not aware of any reason why he would not tell the truth. Further, his lengthy experience as a coal miner and coal mine inspector demonstrates that he knows what he is

⁷ A trickle duster is a mechanical device that continuously puts small amounts of rock dust into the air, in this case Aup the entry on the Number 2 belt and around the head.@ (Tr. 126-27.)

testifying about and can tell the difference between accumulations of coal and coal dust and rock dust. Finally, the length of time required to clean-up the non-existent accumulations corroborates his description of what he observed.

On the other hand, the company's witnesses, three of whom, Morley, Adkins and Williamson, would appear to be directly responsible if the accusations are true, have an obvious motive for shading the truth. In addition, the operator, who is ultimately responsible for answering the allegations, has an obvious motive for encouraging them to do so. Further, much of the company's testimony appears to be based on the assumption that the belt lines had been cleaned on the shift before the inspection so that there could not have been the extensive accumulations found by the inspector. However, no one with personal knowledge testified that such cleaning had taken place. Furthermore, the repetitive entry in the examination book that at least the No. 3 belt needed dusting indicates that cleaning and dusting were not always performed as they were supposed to be.

Accordingly, I find that accumulations of coal dust, float coal dust, loose coal and other combustible materials existed along the Nos. 2 and 3 belt ways as described by the inspector. I further find that the accumulations had existed for several shifts and that, since no mention was made of them in the belt examination book, the required belt examinations were not being properly made. Consequently, I conclude that Clean Energy violated sections 75.400 and 75.362(b) as alleged.

Significant and Substantial

The Inspector found the violations to be significant and substantial. A "significant and substantial" (S&S) violation is described in Section 104(d)(1) of the Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." A violation is properly designated S&S "if, based upon the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." *Cement Division, National Gypsum Co.*, 3 FMSHRC 822, 825 (April 1981).

In *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (January 1984), the Commission set out four criteria that have to be met for a violation to be S&S. See also *Buck Creek Coal, Inc. v. FMSHRC*, 52 F.3d 133, 135 (7th Cir. 1995); *Austin Power, Inc. v. Secretary*, 861 F.2d 99, 103-04 (5th Cir. 1988), *aff'g Austin Power, Inc.*, 9 FMSHRC 2015, 2021 (December 1987)(approving *Mathies* criteria). Evaluation of the criteria is made in terms of "continued normal mining operations." *U.S. Steel Mining Co., Inc.*, 6 FMSHRC 1573, 1574 (July 1984). The question of whether a particular violation is significant and substantial must be based on the particular facts surrounding the violation. *Texasgulf, Inc.*, 10 FMSHRC 498 (April 1988); *Youghiogheny & Ohio Coal Co.*, 9 FMSHRC 1007 (December 1987).

Inspector Church testified that the main hazard from the black, dry accumulations was the danger of a fire which with its resulting smoke and gases could asphyxiate miners. He additionally stated that with the amount of float coal dust in the air the potential for a mine explosion also existed. He propounded that a fire or explosion could be ignited by the Arcs or sparks or flash, flames from the operation of electrical components inside these belt starter boxes. (Tr. 39.) In this connection, he noted that he found float coal dust inside the belt starter boxes. He also advanced that ignition could result from the metal belt rollers becoming stuck and causing heat and he pointed out that several of the rollers on the No. 3 belt were, in fact, bound and the accumulations in the area were warm to the touch.

The Respondent maintains that the accumulations consisted mainly of rock dust and were, therefore, not combustible. I have already rejected this argument in finding that the accumulations were as described by the inspector. Thus, I find that the two accumulation violations presented the hazard of fire or explosion, that given the ignition sources described by Inspector Church a fire or explosion was reasonably likely to occur during continued normal mining operations and that a fire or explosion would result in reasonably serious injuries to miners.

Accordingly, I find the two accumulation violations to be significant and substantial. Furthermore, since the failure to properly examine the belts as required by the regulation directly lead to the accumulations, I find that violation was also significant and substantial.

Unwarrantable Failure

All three orders are alleged to have resulted from the operator's unwarrantable failure to comply with the regulations. The Commission has held that unwarrantable failure is aggravated conduct constituting more than ordinary negligence by a mine operator in relation to a violation of the Act. *Emery Mining Corp.*, 9 FMSHRC 1997, 2004 (December 1987); *Youghiogheny & Ohio Coal Co.*, 9 FMSHRC 2007, 2010 (December 1987). An unwarrantable failure is characterized by such conduct as reckless disregard, intentional misconduct, indifference or a serious lack of reasonable care. [Emery] at 2003-04; *Rochester & Pittsburgh Coal Corp.* 13 FMSHRC 189, 193-94 (February 1991). *Wyoming Fuel Co.*, 16 FMSHRC 1618, 1627 (August 1994).

The Commission has held that a number of factors are relevant in determining whether a violation is the result of an operator's unwarrantable failure, such as the extensiveness of the violation, the length of time that the violative condition has existed, the operator's efforts to eliminate the violative condition, and whether an operator has been placed on notice that greater efforts are necessary for compliance. *Mullins and Sons Coal Company, Inc.*, 16 FMSHRC 192, 195 (February 1994) (citation omitted). In this case, all of those factors indicate that the violations were unwarrantable

In accepting the inspector's testimony, I have found that the accumulations were on, in, around and under the No. 2 belt and extended along the entire 1600 foot length of the No. 3 belt. Clearly, the accumulations were extensive. They had existed for several shifts and there is no

evidence that the company made any effort to clean them up or had taken any special precautions to prevent them from happening.

This is particularly egregious in view of the fact that Inspector Church had advised, when he first began inspecting the mine the previous fall, that attention needed to be paid to accumulations. He related that

during my preinspection conference, I mentioned to Mr. Stump and Mr. Morley through conversation that I was concerned about the amount of violations that had been issued to them by other inspectors conducting inspections at the mine in the past. I specifically addressed the 75.400 because of the amount of gas that the mine liberates to go along with the accumulations that's being cited under 400.

....

I just simply stated to them that, "Fellows, you need to maybe look at these a little bit stronger in those areas where you're getting these type of violations; to maybe focus on those a little bit and try to get your history of violations down in that area."

What I was basically doing was making them aware during the preinspection conference that these were areas of concern, and I felt like they needed to be informed and made aware of it because I was aware of it.

(Tr. 33, 35.) The inspector's concerns were well founded. The record indicates that 25 citations for violations of section 75.400 had been issued at Mine No. 1 in the 2-years prior to the instant violations. (Govt. Ex. 3.)

Accordingly, I find that the accumulation violations resulted from the company's unwarrantable failure to comply with section 75.400. I further find that the violation of section 75.362(b) also arose from the company's unwarrantable failure. After receiving numerous citations for accumulations and being advised by the inspector that he would be paying particular attention to such violations, the failure of the belt examiners to report these can most charitably be described as indifferent. Plainly, the operator had not instilled a heightened alert to the problem in its employees.

Civil Penalty Assessment

The Secretary has proposed civil penalties of \$14,698.00 for the violations in these cases, of which \$7,000.00 was for the contested orders. However, it is the judge's independent responsibility to determine the appropriate amount of penalty in accordance with the six penalty criteria set out in section 110(i) of the Act. *Sellersburg Stone Co. v. FMSHRC*, 736 F.2d 1147, 1151 (7th Cir. 1984); *Wallace Brothers, Inc.* 18 FMSHRC 481, 483-84 (April 1996).

In connection with those criteria, the parties have stipulated that: (1) the proposed penalties are appropriate to the size of the operator's business and will not affect the operator's ability to remain in business; (2) the operator demonstrated good faith in attempting to achieve rapid compliance after notification of the violations; and, (3) the Clean Energy Mine No. 1 produced 1,006,479 tons of coal in the twelve months preceding these violations and during the same period the company's controlling entity, Fluor Corporation, produced 21,675,226 tons of coal. (Tr. 16-17.) In addition, I find that the company's history of violations falls in the average range. (Govt. Ex. 1.)

Based on the penalty criteria, I will assess the penalties proposed by the Secretary for the uncontested citations, and the penalties agreed on for the settled citations. For the contested orders, in accordance with my S&S findings, I conclude that the gravity of the three violations was serious. I further conclude that they resulted from the operator's unwarrantable failure to follow the regulations and involved high negligence. Consequently, I assess penalties of \$7,000.00.

The penalty assessed for each citation or order is as follows:

Docket No. KENT 96-290

<u>Citation/Order No.</u>	<u>Penalty</u>
4023148	\$ 235.00
4508816	\$ 1,200.00
4508817	Vacated
4508818	\$ 100.00
4508819	\$ 100.00

Docket No. KENT 96-291

4012619	\$ 2,000.00
4012620	\$ 3,000.00
4023151	\$ 2,000.00
4516854	\$ 50.00
4592883	\$ 50.00

Docket No. KENT 96-329

4036830	\$ 235.00
4036831	\$ 235.00
4036832	\$ 50.00
4224947	\$ 235.00

4224948	\$ 171.00
4224949	\$ 690.00
4224950	\$ 345.00
4224951	\$ 50.00
4036822	\$ 235.00
4036823	\$ 50.00
4036824	\$ 50.00
4036825	\$ 50.00
4036826	\$ 50.00
4036827	\$ 50.00
4036828	\$ 50.00
4036829	\$ 235.00
4224952	\$ 50.00
4509449	Vacated
4509450	\$ 50.00

Docket No. KENT 97-31

4235493	\$ 235.00
Total Penalties \$11,851.00	

ORDER

Accordingly, Citation No. 4023148 is **AFFIRMED**, Citation No. 4508816 is **MODIFIED** to include the allegations in Citation No. 4508817 and **AFFIRMED** as modified, Citation Nos. 4508818 and 4508819 are **MODIFIED** to delete the **significant and substantial** designations and **AFFIRMED** as modified, and Citation No. 4508817 is **VACATED** in Docket No. KENT 96-290; Order Nos. 4012619, 4012620 and 4023151 are **AFFIRMED**, Citation No. 4516854 is **MODIFIED** to reduce the level of negligence from **moderate** to **low** and **AFFIRMED** as modified, and Citation No. 4592883 is **MODIFIED** to reduce the level of negligence from **low** to **none** and **AFFIRMED** as modified in Docket No. KENT 96-291; Citation Nos. 4036822, 4036823, 4036824, 4036825, 4036826, 4036827, 4036828, 4036829, 4036830, 4036831, 4036832, 4224951, 4224652 and 4509450 are **AFFIRMED**, Citation No. 4224947 is **MODIFIED** to reduce the number of miners affected by the violation from ten to one and **AFFIRMED** as modified, Citation Nos. 4224948 and 4224950 are **MODIFIED** to delete the **significant and substantial** designations, and Citation No. 4509449 is **VACATED** in Docket No. KENT 96-329; and Citation No. 4235493 is **AFFIRMED** in Docket No. KENT 97-31.

Clean Energy Mining Company is **ORDERED TO PAY** civil penalties of **\$11,851.00** within 30 days of the date of this decision. On receipt of payment, these cases are **DISMISSED**.

T. Todd Hodgdon
Administrative Law Judge

Distribution:

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