

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
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August 31, 2004

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2002-61
Petitioner	:	A.C. No. 33-01159-04192
	:	
v.	:	
	:	
THE OHIO VALLEY COAL COMPANY,	:	
Respondent	:	Powhatan No. 6 Mine

DECISION APPROVING SETTLEMENT ON REMAND

Before: Judge Hodgdon

This case is before me on remand from the Commission. *Ohio Valley Coal Co.*, No. LAKE 2002-61 (May 18, 2004).¹ The matter was remanded for a determination of whether the violation was “significant and substantial”² and for assessment of a civil penalty. *Id.* The parties, by counsel, have filed a motion to approve a settlement agreement. The agreement provides that the determination of “significant and substantial” will remain as issued, i.e. that the violation was “significant and substantial” and for a reduction in penalty from \$35,000.00 to \$10,000.00.

Having considered the representations and documentation submitted, 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). Accordingly, the motion for approval of settlement is **GRANTED** and the Respondent is **ORDERED TO PAY** a penalty of **\$10,000.00** within 30 days of the date of this order.

T. Todd Hodgdon
Administrative Law Judge

¹ The matter was remanded to the Commission by the U.S. Court of Appeals for the D.C. Circuit. *Sec. v. Ohio Valley Coal Co.*, 359 F.3d 531 (D.C. Cir. 2004); 2004 WL 547606 (unpublished order granting Secretary’s motion for clarification regarding remand to the Commission).

² The “significant and substantial” terminology is taken from section 104(d)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 814(d)(1), which distinguishes as more serious in nature any violation that “could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard.”

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