

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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March 31, 1999

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. LAKE 98-132  
Petitioner : A. C. No. 12-02226-03502  
v. :  
 : Docket No. LAKE 98-134  
COLLIE COAL COMPANY, : A.C. No. 12-02226-03501  
Respondent :  
 : Collie Coal Company

**DECISION**

Appearances: Christine M. Kassak Smith, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois, and Michael D. Rennie, Conference and Litigation Representative, Mine Safety and Health Administration, U.S. Department of Labor, Benton, Illinois, for Petitioner;  
Joseph L. Hensley, Collie Coal Company, Terre Haute, Indiana, 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 Collie Coal Company, pursuant to section 105 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815. The petitions allege nine violations of the Secretary's mandatory health and safety standards and seek penalties of \$488.00. A hearing was held in Greencastle, Indiana. For the reasons set forth below, I affirm the citations and assess penalties of \$488.00.

**Background**

The Collie Coal Company began operating at an abandoned coal mine site in Vigo County, Indiana, approximately three years ago. On February 19, 1998, MSHA Coal Mine Inspector Vernon Stumbo was directed by his supervisor, who had learned of the operation from a state mine inspector, to go to the Collie Coal Company to determine if the facility came under MSHA jurisdiction and, if so, to conduct an inspection. Stumbo concluded that the operation did involve coal mining and issued the three citations in Docket No. LAKE 98-134. He returned in March and issued the six citations in Docket No. LAKE 98-132.

Collie asserts that it is not a coal mine because it does not prepare coal within the meaning of section 3(i) of the Act, 30 U.S.C. ' 802(i), and, therefore, is not subject to MSHA jurisdiction. Aside from the jurisdictional issue, the Respondent does not contest the citations. (Tr. 10.)

### **Findings of Fact and Conclusions of Law**

When the site, which Collie now operates, was used by a functioning coal mine, slurry from the preparation plant was pumped into pits, as waste product, and covered with dirt. The non-liquid part of the slurry consisted, among other things, of coal fines.<sup>1</sup> Collie has found a way to use the coal fines.

The earth cover is removed from the material in the pit and the fines are removed from the pit by a back hoe and loaded into a pit truck. The truck either takes the fines to be screened or takes the fines to be placed on the ground and dried out. If the material is to be screened, it is dumped into a hopper where it goes through a large screen which takes out any dirt, rocks, wood and other rough material. The dirt, rocks and wood are dumped on the ground and the coal fines are deposited on a conveyor belt and discharged into piles on the ground to dry. Once the fines are dry, the piles are covered with tarpaulins to keep them dry. The dry fines are sold to Indiana Power and Light and other coal mines.

Section 3(h)(2), 30 U.S.C. ' 802(h)(2), of the Act provides that:

A coal mine means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities.

Section 3(i) defines the work of preparing coal as the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of a coal mine.

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<sup>1</sup> Fines are: finely crushed or powdered material, e.g., of coal, crushed rock, or ore, as contrasted with the coarser fragments; esp. material smaller than the minimum specified size or grade, such as coal with a maximum particle size less than 3.2 mm . . . . American Geological Institute, *Dictionary of Mining, Mineral, and Related Terms* 208 (2d ed. 1997) (DMMRT).

It has long been the law that the definitions of coal mine and coal preparation are to be broadly interpreted and questions as to whether a facility comes within the jurisdiction of the Act are to be resolved in favor of inclusion. As the Commission has recently restated:

The definitions of coal mine and coal preparation in sections 3(h) and 3(i) are broad and sweeping and expansive. *Marshall v. Stouder Ferry Preparation Co.*, 602 F.2d 589, 591-92 (3d Cir. 1979), cert. denied, 444 U.S. 1015 (1980). Congress intended that doubts be resolved in favor of inclusion of a facility within the coverage of the Act. S. Rep. No. 181, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 14 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95<sup>th</sup> Cong. 2d Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 602 (1978).

*RNS Services, Inc.*, 18 FMSHRC 523, 527 (April 1996), aff'd as *RNS Services Inc. v. Secretary of Labor*, 115 F.3d 182 (3<sup>rd</sup> Cir. 1997).

In *RNS*, the Commission held that the processing of refuse and other material containing small amounts of coal constituted the work of preparing coal and that loading and hauling coal waste was sufficient for concluding that a refuse pile was subject to MSHA jurisdiction. *Id.* at 529. In this case, Collie cleans the coal by screening it to remove dirt, rocks, wood and other rough material.<sup>2</sup> It dries the coal. It stores the coal. It loads and hauls the coal from the pit to the conveyor or to the storage space. And it loads the coal in trucks to be hauled to Indiana Power and Light and, apparently, other coal mines. Finally, all of this takes place on land . . . resulting from the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth . . .

Accordingly, I conclude the Collie Coal Company is a coal mine subject to the Act. In view of this conclusion, and the fact that the citations are not contested, I affirm the citations.

### **Civil Penalty Assessment**

The Secretary has proposed penalties of \$488.00 for the nine violations in these cases. 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, 30 U.S.C.

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<sup>2</sup> Cleaning is a general term for the methods and processes of separating dirt from coal . . . *DMMRT* at 104.

' 820(i). *Sellersburg Stone Co. v. FMSHRC*, 736 F.2d 1147, 1151 (7<sup>th</sup> Cir. 1984); *Wallace Brothers, Inc.*, 18 FMSHRC 481, 483-84 (April 1996).

In connection with the penalty criteria, the parties have stipulated that: (1) the Collie Company Coal Mine was the company's only mine during 1998; (2) the operator had no violations prior to the ones in these cases; and (3) the payment of the proposed penalties will not affect Collie's ability to remain in business. (Jt. Ex. 1.) From these I conclude that Collie is a small operator with no history of prior violations and that payment of \$488.00 will not affect the company's ability to continue in business. I further find that, with the exception of Citation No. 4264894 in Docket No. LAKE 98-132, the gravity of all the violations was low and, with the exception of Citation No. 4265116 in Docket No. LAKE 98-134, the negligence was moderate. The gravity for Citation No. 4264894 was moderate and the negligence in Citation No. 4265116 was low. Finally, the evidence indicates that Collie demonstrated good faith in attempting to achieve rapid compliance after notification of the violations.

Taking all of this into consideration, I conclude that the penalties proposed by the Secretary are appropriate, and assess them as follows:

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<u>Citation No.</u>	<u>Penalty</u>
4264890	\$ 50.00
4264891	\$ 50.00
4264892	\$ 50.00
4264893	\$ 50.00
4264894	\$ 88.00
4264896	\$ 50.00

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4265112	\$ 50.00
4265116	\$ 50.00
4265117	<u>\$ 50.00</u>
Total	\$488.00

**Order**

In view of the above, Citation Nos. 4264890, 4264891, 4264892, 4264893, 4264894 and 4264896 in Docket No. LAKE 98-132 and Citation Nos. 4265112, 4265116 and 4265117 in Docket No. LAKE 98-134 are **AFFIRMED**. Collie Coal Company is **ORDERED TO PAY** civil penalties of **\$488.00** within 30 days of the date of this decision.

T. Todd Hodgdon  
Administrative Law Judge

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