

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 18, 2004

RAG CUMBERLAND RESOURCES, LP, Contestant	:	CONTEST PROCEEDINGS
	:	
v.	:	Docket No. PENN 2000-181-R
	:	Citation No. 3657290; 7/6/2000
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Respondent	:	Docket No. PENN 2000-182-R
	:	Citation No. 3657291; 7/6/2000
	:	
	:	Cumberland Mine
	:	Mine ID 36-05018
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	CIVIL PENALTY PROCEEDING
	:	
v.	:	Docket No. PENN 2001-63-A
	:	A.C. No. 36-05018-04200
	:	
RAG CUMBERLAND RESOURCES LP, Respondent	:	Cumberland Mine
	:	

DECISION ON REMAND

Before: Judge Feldman

These consolidated contest and civil penalty matters have been remanded by the Commission for reassessment of the civil penalty for Citation No. 3657291 for RAG Cumberland Resources LP's (Cumberland's) failure to immediately correct hazardous bleeder conditions as required by the mandatory safety standard in section 75.363(a). 26 FMSHRC 639, 653, 658 (August 2004). The initial decision imposed a \$10,000.00 civil penalty for Citation No. 3657291. 23 FMSHRC 1241 (November 1999) (ALJ).

In its remand, the Commission directed reassessment of the civil penalty in light of its determination that Cumberland's violation of 75.363(a) was not unwarrantable. 26 FMSHRC at 659. The Commission also determined that consideration of Cumberland's conduct as an aggravating factor based on my finding that Cumberland had breached a fundamental goal of the Mine Act was improper because it went beyond the scope of the statutory civil penalty criteria in section 110(i) of the Act. 30 U.S.C. § 820(i). *Id.* at 658-59.

On September 29, 2004, the Secretary filed a joint stipulation with respect to the reassessment issue. The parties stipulated as follows:

This case has been remanded to this Court to reassess a civil penalty for Citation No. 3657291 in accordance with the terms of the Decision by the Review Commission dated August 10, 2004. In light of the fact that neither party can pursue an appeal of the Commission Decision until the penalty becomes final, the parties have agreed to stipulate to the assessment of a civil penalty in the amount of \$3,000 for Citation No. 3657291. The parties enter into this stipulation to expedite further review of the Commission decision.

In view of the Commission's decision, I conclude that the parties' agreement to impose a \$3,000.00 civil penalty for Citation No. 3657291 is consistent with the penalty criteria set forth in section 110(i) of the Mine Act. Accordingly, **IT IS ORDERED** that RAG Cumberland Resources LP pay a civil penalty of \$3,000.00 in satisfaction of Citation No. 3657291 within 45 days of the date of this decision.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

R. Henry Moore, Esq., Jackson Kelly, PLLC, Three Gateway Center,
401 Liberty Avenue, Suite 1340, Pittsburgh, PA 15222

Susan Jordan, Esq., Office of the Solicitor, U.S. Department of Labor, The Curtis Center,
Suite 630 East, 170 S. Independence Mall West, Philadelphia, PA 19106-3306

Judy Rivlin, Esq., United Mine Workers of America, 8315 Lee Highway,
Fairfax, VA 22031-2215

/hs