

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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June 20, 2008

EMERALD COAL RESOURCES, LP	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. PENN 2007-257-R
	:	Citation No. 7020004;05/25/2007
	:	
v.	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Emerald No. 1 Mine
ADMINISTRATION, (MSHA),	:	Mine ID 36-05466
Respondent	:	
	:	
CUMBERLAND COAL RESOURCES, LP,:	:	
Contestant	:	
	:	Docket No. PENN 2007-258-R
	:	Citation No. 7020005;05/25/2007
	:	
v.	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Cumberland Mine
ADMINISTRATION, (MSHA),	:	Mine ID 36-05018
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 2008-71
Petitioner	:	A.C. No. 36-05466-130159
	:	
v.	:	
	:	
EMERALD COAL RESOURCES, LP,	:	
Respondent	:	No. 1
	:	

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 2008-72
Petitioner	:	A.C. No. 36-05018-130158
	:	
v.	:	
	:	
CUMBERLAND COAL RESOURCES LP,	:	
Respondent	:	Cumberland Mine

**DECISION APPROVING SETTLEMENT**

Before: Judge Zielinski

These cases are before me on Notices of Contest and Petitions for Assessment of Civil Penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The subject citations were issued by the Department of Labor’s Mine Safety and Health Administration (“MSHA”) to Emerald Coal Resources, LP, and Cumberland Coal Resources, LP, pursuant to section 316(b)(2)(G) of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, 30 U.S.C. § 876(b)(2)(G). The validity of the citations was affirmed in Emergency Response Plan Dispute Proceedings before the Commission. 29 FMSHRC 956 (Dec. 2007), *affirming* 29 FMSHRC 542 (June 2007) (ALJ). Civil penalties in the amount of \$250.00 were later assessed for each citation, and were timely contested by the operators.

The parties have negotiated an agreed resolution of the cases and, by motion, seek approval of the settlement agreement. The Secretary has agreed to modify the citations to specify that there was “no likelihood” of injury, “no lost workdays” would be expected, and that no miners were exposed to a hazard as a result of the violations. In addition the Secretary has agreed to modify the citations to specify that the violations were not significant and substantial and that there was no negligence associated with the circumstances underlying the citations. The operators have agreed to pay the originally assessed penalties in the amount of \$250.00 each. I have considered the representations and evidence submitted and conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

**WHEREFORE**, the motion for approval of settlement is **GRANTED**, and it is **ORDERED** that the citations are hereby amended as proposed in the motion and that Respondents, Emerald Coal Resources, LP, and Cumberland Coal Resources, LP, each pay a penalty of \$250.00 within 30 days.

Michael E. Zielinski  
Administrative Law Judge

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