

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 17, 2003

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2002-144
Petitioner	:	A. C. No. 01-01322-04240
	:	
v.	:	Docket No. SE 2002-145
	:	A. C. No. 01-01322-04256
	:	
JIM WALTER RESOURCES, INC.,	:	Docket No. SE 2002-148
Respondent.	:	A. C. No. 01-01322-04247
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	:	Docket No. SE 2002-150
	:	A. C. No. 01-01322-04245
	:	
	:	Docket No. SE 2003-1
	:	A. C. No. 01-01322-04241
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	:	Docket No. SE 2003-2
	:	A. C. No. 01-01322-04242
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	:	Docket No. SE 2003-3
	:	A. C. No. 01-01322-04243
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	:	Docket No. SE 2003-4
	:	A. C. No. 01-01322-04244
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	:	Docket No. SE 2003-5
	:	A. C. No. 01-01322-04246
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	:	Docket No. SE 2003-6
	:	A. C. No. 01-01322-04248
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	:	Docket No. SE 2003-7
	:	A. C. No. 01-01322-04249
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	:	Docket No. SE 2003-8
	:	A. C. No. 01-01322-04250

: Docket No. SE 2003-9
 : A. C. No. 01-01322-04251
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 : Docket No. SE 2003-10
 : A. C. No. 01-01322-04252
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 : Docket No. SE 2003-11
 : A. C. No. 01-01322-04253
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 : Docket No. SE 2003-12
 : A. C. No. 01-01322-04254
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 : Docket No. 2003-13
 : A. C. No. 01-01322-04255
 :
 : No. 5 Mine

DECISION APPROVING SETTLEMENT

Appearances: Leslie John Rodriguez, Esq., Michael K. Hagan, Esq., U. S. Department of Labor, Atlanta, Georgia, on behalf of Petitioner;
 David M. Smith, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama, on behalf of Respondent;
 Guy W. Hensley, Esq., Jim Walter Resources, Inc., Brookwood, Alabama, on behalf of Respondent

Before: Judge Barbour

In these consolidated civil penalty cases, arising under Sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act or Act) (30 U. S. C. §§ 815, 820), the Secretary, on behalf of her Mine Safety and Health Administration (MSHA), seeks civil penalty assessments for 309 alleged violations of mandatory safety standards found in Parts 41, 48, 50, 75, and 77 of Title 30, Code of Federal Regulations, and for one alleged violation of Section 103(k) of the Act (30 U.S.C. § 813(k)). All of the citations were issued following September 23, 2001, the date when two explosions occurred at Jim Walter Resources, Inc.’s (JWR) No. 5 Mine. Although the explosions took the lives of 13 miners and seriously injured three others, none of the violations is alleged to have contributed to the cause of the accidents or to the resulting deaths and injuries (see Tr.12).

After the petitions were filed, I entered a prehearing order requiring the parties to confer and to discuss settlement. While in the process of conferring, but prior to engaging in substantive settlement discussions, the parties instituted discovery. In response to the Secretary’s discovery efforts, JWR filed a motion for partial summary decision, arguing that, as a matter of

law, it was not responsible for many of the alleged violations because it did not control the mine at the time the citations were issued.¹ JWR also filed a motion to stay discovery, asserting a favorable ruling on its summary decision motion would obviate the need for discovery in many instances. I agreed, and granted JWR's latter motion. Subsequently, the Secretary filed a cross motion for partial summary decision, asserting that there was no basis for ruling in the company's favor, that JWR did not contest the factual allegations leading to the alleged violations and that the violations, therefore, existed as charged.

I denied the motions for summary decision. In so doing, I expressed my view regarding JWR's argument that the Secretary's imposition of a Section 104(k) order at the mine divested the company of its responsibility for many of the alleged violations. I stated in part, "Section 103(k) grants to the Secretary the extraordinary authority to take control of all or part of the mine away from the operator. Use of the authority can effectively place the Secretary in the shoes of the operator, and result in a disruption of the nexus between responsibility and control, a nexus that is a basis for the operator's liability" (Order Denying Cross Motions for Summary Decision 8-9). Therefore, I stated that in the forthcoming penalty proceedings I would "recognize an affirmative defense based upon the . . . imposition of the Section 103(k) order, provided the record establishe[d] in each instance that the . . . order as originally imposed or as subsequently modified and amended, deprived the company of its authority and control in the part of the mine where the cited condition existed, and that the condition would not have existed but for the presence of the order and its restrictions" (*Id.* 9). I also concluded the undisputed material facts did not establish that the specific conditions alleged in the citations would not have existed but for the restrictions imposed by the order and its modifications. I held that to make such determinations, I would need to hear the testimony of the inspectors regarding the scope of the order and its effect on the particular cited conditions (*Id.*). In addition, I also noted my disagreement with the Secretary's assertions that the material facts established JWR's liability for all of the alleged violations, and I again stated my belief that I needed to hear from the witnesses before I could resolve the many questions of liability (Order Denying Motions for Summary Decision 9-10).

Because of the large number of alleged violations, I instituted organizational requirements to facilitate resolution of the cases. In addition, I scheduled a prehearing conference of record at which the parties were directed, among other things, to identify the issues to be resolved at trial, to state an agreed upon discovery schedule, to state an agreed upon trial plan for the 17 consolidated dockets, and to announce the appointment of settlement representatives (*Id.* 10-13).

¹ On the same day the explosions occurred, the Secretary, pursuant to Section 103(k) of the Act, issued Order No. 7676787 at the mine. Section 103(k) provides that in the event of an accident, an inspector "may issue such orders as he [or she] deems appropriate to insure the safety of any person in the . . . mine, and the operator . . . shall obtain the approval of . . . [MSHA] . . . to recover any person in such mine or to recover the coal . . . or to return the affected areas of such mine to normal." A Section 103(k) order commonly is referred to as a "control order." Order No. 7676787 was terminated on June 11, 2002.

When the conference convened, counsel for the Secretary announced that the parties had reached an agreement to settle all of the cases. The settlement was in part “based upon . . . the language . . . of . . . [the] order denying [the] cross motions for summary judgement” (Tr. 10). Counsel for the Secretary and JWR described the broad outlines of the settlement agreement (Tr. 10-17) and stated that the agreement would be amplified and supported in a joint motion to approve the settlement.

Counsel now have filed that motion pursuant to Commission Rule 31 (29 C.F.R. § 2700.31). As they did at the conference, counsel note my recognition of “an affirmative defense based on the Secretary’s imposition of the section 103(k) order, provided the record establishes in each instance that the section 103(k) order deprived the company of its authority and control” (Joint Motion To Approve Settlement and Dismiss 14, *quoting* Order Denying Cross Motions for Summary Decision 9). Counsel also note that JWR maintains the affirmative defense to some extent applies to all 310 citations at issue. In addition, counsel state that the Secretary has agreed to vacate 22 citations, to reclassify five citations from significant and substantial (S&S) to non-S&S and to reclassify the negligence of one citation from “low” to “none.” Counsel also state that they have made additional compromises in view of “the vagaries of litigation” (*Id.* 14, 16-17). Moreover, in order to avoid the expense and inconvenience of litigation, JWR agrees to withdraw its contests to 222 single-penalty assessments listed in the dockets (*id.* 12). Finally, counsel have submitted general information pertaining to the six statutory civil penalty criteria found in Section 110(i) of the Act, including information regarding Respondent’s size, ability to continue in business and history of previous violations.

The proposed settlement is as follows:

SE 2002-144

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7675567	09/28/01	77.516	\$ 55.00	\$ 55.00
7675568	09/28/01	77.202	\$ 55.00	VACATE
7675569	09/28/01	77.400	\$ 55.00	\$ 55.00
7675570	09/28/01	77.502	\$ 55.00	\$ 55.00
7675571	09/28/01	77.1104	\$ 55.00	VACATE
7675572	09/28/01	77.1607cc	\$ 55.00	\$ 55.00
7677601	09/28/01	77.204	\$ 55.00	\$ 55.00
7677602	09/28/01	77.516	\$ 55.00	\$ 55.00
7677603	09/28/01	77.202	\$ 475.00	\$210.00
7677604	09/28/01	77.516	\$ 55.00	\$ 55.00
7677605	09/28/01	77.516	\$ 55.00	\$ 55.00
7677606	09/28/01	77.200	\$ 55.00	VACATE
7677607	09/28/01	77.516	\$ 55.00	\$ 55.00
TOTAL			\$1,135.00	\$705.00

SE 2002-145

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7670063	06/04/02	75.370(a)(1)	\$ 55.00	\$ 55.00
7670064	06/04/02	75.370(a)(1)	\$ 55.00	\$ 55.00
7678422	06/04/02	75.202(a)	\$ 161.00	\$ 80.00
7677873	06/05/02	75.364(b)(2)	\$ 55.00	\$ 55.00
7677464	06/06/02	75.400	\$ 317.00	\$ 125.00
7677465	06/06/02	75.362(b)	\$ 317.00	\$ 125.00
7677874	06/07/02	75.202(a)	\$ 224.00	\$ 105.00
7677875	06/07/02	75.202(a)	\$ 224.00	\$ 105.00
7678812	06/07/02	75.400	\$ 224.00	\$ 105.00
4864961	06/08/02	75.1403-5(g)	\$ 55.00	\$ 55.00
7677466	06/08/02	75.380(d)(1)	\$ 224.00	\$ 105.00
4864962	06/10/02	75.333(c)(1)	\$ 55.00	\$ 55.00
TOTAL			\$1,966.00	\$1,025.00

SE 2002-148

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7678307	02/19/02	75.512	\$ 55.00	\$ 55.00
7676674	02/20/02	75.1403	\$ 55.00	\$ 55.00
7676675	02/20/02	75.1403	\$ 55.00	\$ 55.00
7676676	02/20/02	75.1910(j)	\$ 55.00	\$ 55.00
7678308	02/20/02	75.900	\$ 55.00	\$ 55.00
7678309	02/20/02	75.512	\$ 55.00	\$ 55.00
7678310	02/20/02	75.400	\$ 475.00	\$ 210.00
7678311	02/20/02	75.705(1)(b)	\$ 55.00	\$ 55.00
7676677	02/21/02	75.1403	\$ 475.00	\$ 210.00
7678312	02/21/02	75.1903(a)(2)	\$ 55.00	\$ 55.00
7678313	02/21/02	75.202(a)	\$ 55.00	\$ 55.00
7678314	02/21/02	75.202(a)	\$ 55.00	\$ 55.00
7678315	02/21/02	75.400	\$ 475.00	\$ 210.00
7678316	02/21/02	75.400	\$ 475.00	\$ 210.00
7678317	02/21/02	75.512	\$1,815.00	\$ 900.00
7677760	02/22/02	77.205(b)	\$ 55.00	\$ 55.00
7677761	02/22/02	77.200	\$ 55.00	\$ 55.00
7677762	02/22/02	77.400(c)	\$ 55.00	\$ 55.00
7677763	02/23/02	75.400	\$ 55.00	\$ 55.00
TOTAL			\$4,485.00	\$2,510.00

SE 2002-150

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7677742	01/04/02	75.360(a)(1)	\$ 55.00	\$ 55.00
7677743	01/10/02	75.1722(b)	\$ 55.00	\$ 55.00
7677744	01/10/02	75.400	\$ 55.00	\$ 55.00
7677670	01/15/02	48.7(c)	\$2,279.00	\$1,100.00
7677671	01/15/02	48.6(b)	\$ 679.00	\$ 300.00
7677745	01/15/02	75.333(h)	\$ 55.00	\$ 55.00
7677746	01/18/02	75.333(h)	\$ 55.00	\$ 55.00
7669802	01/19/02	75.400	\$ 55.00	\$ 55.00
7669803	01/19/02	75.400	\$ 55.00	\$ 55.00
7669804	01/19/02	75.1910(f)	\$ 55.00	\$ 55.00
7669805	01/19/02	75.1909(b)(4)	\$ 55.00	\$ 55.00
7677747	01/23/02	75.1106-5(a)	\$ 55.00	\$ 55.00
7672662	01/24/02	75.380(d)(1)	\$ 55.00	\$ 55.00
7672663	01/24/02	75.1600	\$ 55.00	\$ 55.00
7677675	01/25/02	77.516	\$ 55.00	\$ 55.00
7677676	01/25/02	77.204	\$ 55.00	\$ 55.00
7677677	01/25/02	77.516	\$ 55.00	\$ 55.00
7677678	01/25/02	77.516	\$ 55.00	\$ 55.00
7677679	01/25/02	103(k)	\$ 55.00	\$ 55.00
TOTAL			\$3,893.00	\$2,335.00

SE 2003-1

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7677608	09/28/01	77.516	\$ 55.00	\$ 55.00
7677609	09/28/01	77.516	\$ 55.00	\$ 55.00
7677610	09/28/01	77.516	\$ 55.00	\$ 55.00
3018484	12/05/01	77.507	\$ 475.00	\$ 210.00
7385798	12/06/01	75.400	\$ 55.00	VACATE
7386424	12/06/01	75.400	\$ 55.00	VACATE
7386425	12/06/01	75.807	\$ 55.00	VACATE
7509385	12/06/01	75.1100-3	\$ 55.00	VACATE
7530826	12/06/01	75.1909(b)(4)	\$ 55.00	VACATE
7530827	12/06/01	75.1403	\$ 475.00	\$ 210.00
7530828	12/06/01	75.1909(b)(4)	\$ 55.00	\$ 55.00
7530829	12/06/01	75.1909(a)(3)(x)	\$ 55.00	\$ 55.00
7644256	12/06/01	75.1914(a)	\$ 993.00	\$ 457.00
7644258	12/06/01	75.321(a)(2)	\$ 475.00	VACATE

7647056	12/06/01	75.1203	\$ 55.00	\$ 55.00
7647057	12/06/01	75.333(h)	\$ 55.00	VACATE
7385799	12/07/01	75.400	\$ 55.00	VACATE
7385800	12/07/01	75.333(b)(4)	\$ 55.00	VACATE
7385801	12/07/01	75.400	\$ 55.00	\$ 55.00
TOTAL			\$3,243.00	\$1,262.00

SE 2003-2

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7385802	12/07/01	75.1403-5(g)	\$ 55.00	VACATE
7509389	12/07/01	75.333(h)	\$ 277.00	\$115.00
7530830	12/07/01	75.400	\$ 55.00	VACATE
7647058	12/07/01	75.400	\$ 55.00	VACATE
7676569	12/07/01	77.202	\$ 475.00	\$210.00
7676570	12/07/01	77.200	\$ 55.00	\$ 55.00
7676571	12/07/01	77.200	\$ 55.00	\$ 55.00
7386426	12/08/01	75.400	\$ 475.00	\$ 55.00
7386427	12/08/01	75.333(h)	\$ 475.00	VACATE
7509390	12/08/01	75.333(h)	\$ 475.00	\$210.00
7509391	12/08/01	75.400	\$ 55.00	VACATE
7530831	12/08/01	75.340(a)(1)(i)	\$ 993.00	\$ 55.00
7644259	12/08/01	75.517	\$ 55.00	\$ 55.00
7647059	12/08/01	75.1914(a)	\$ 55.00	\$ 55.00
7647060	12/08/01	75.400	\$ 55.00	VACATE
7647081	12/08/01	75.1100-3	\$ 55.00	VACATE
7647082	12/08/01	75.1100-3	\$ 55.00	VACATE
7647085	12/08/01	75.503	\$ 55.00	\$ 55.00
7647086	12/08/01	75.400	\$ 55.00	\$ 55.00
TOTAL			\$3,885.00	\$975.00

SE 2003-3

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7509392	12/09/01	75.1714-1(c)	\$ 55.00	\$ 55.00
7647088	12/09/01	75.1914(e)	\$ 55.00	\$ 55.00
7647089	12/09/01	75.1713-7(b)	\$ 55.00	\$ 55.00
7509393	12/10/01	75.400	\$ 475.00	\$ 55.00
7509394	12/10/01	75.400	\$ 475.00	\$ 55.00
7509395	12/10/01	75.400	\$ 475.00	\$ 55.00
7647092	12/11/01	75.512	\$ 55.00	\$ 55.00

7647093	12/11/01	75.512	\$ 55.00	\$ 55.00
7647094	12/11/01	75.904	\$ 55.00	\$ 55.00
7647095	12/11/01	75.1914(a)	\$ 55.00	\$ 55.00
7647097	12/11/01	75.400	\$ 55.00	VACATE
7647098	12/11/01	75.512	\$ 55.00	\$ 55.00
7509396	12/12/01	75.333(h)	\$ 55.00	VACATE
7509397	12/12/01	75.202(a)	\$ 277.00	\$ 115.00
7676572	12/12/01	77.202	\$ 475.00	\$ 210.00
7676573	12/12/01	77.1110	\$ 55.00	\$ 210.00
7676574	12/12/01	77.205(e)	\$ 55.00	\$ 55.00
7676575	12/12/01	77.205(e)	\$ 475.00	\$ 210.00
7676576	12/12/01	77.202	\$ 55.00	\$ 55.00
TOTAL			\$3,787.00	\$1,460.00

SE 2003-4

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7677733	12/12/01	75.202(a)	\$ 475.00	\$ 210.00
7530833	12/13/01	75.400	\$ 475.00	\$ 210.00
7676578	12/13/01	50.20(a)	\$ 55.00	\$ 55.00
7677734	12/13/01	75.333(h)	\$ 55.00	\$ 55.00
7669961	12/15/01	77.200	\$ 475.00	\$ 210.00
7669975	12/15/01	77.205(e)	\$ 55.00	\$ 55.00
7669976	12/15/01	77.200	\$ 475.00	\$ 210.00
7669977	12/15/01	77.200	\$ 475.00	\$ 210.00
7669978	12/15/01	77.200	\$ 55.00	\$ 55.00
7669979	12/15/01	77.200	\$ 55.00	\$ 55.00
7669980	12/15/01	77.1110	\$ 55.00	\$ 55.00
3018485	12/17/01	50.20(a)	\$ 55.00	\$ 55.00
3018486	12/17/01	75.400	\$ 475.00	\$ 210.00
7669635	01/03/02	75.202(b)	\$ 760.00	\$ 350.00
7677737	01/03/02	75.400	\$ 55.00	\$ 55.00
7677738	01/04/02	75.333(d)(3)	\$ 55.00	\$ 55.00
7677739	01/04/02	75.1722(b)	\$ 55.00	\$ 55.00
7677740	01/04/02	75.333(h)	\$ 55.00	\$ 55.00
7677741	01/04/02	75.333(c)(3)	\$ 55.00	\$ 55.00
TOTAL			\$4,270.00	\$2,270.00

SE 2003-5

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7677749	01/26/02	75.202(a)	\$ 475.00	\$ 210.00
7677750	01/28/02	75.360(a)(1)	\$ 55.00	\$ 55.00
7678120	02/02/02	75.1403	\$ 55.00	\$ 55.00
7678121	02/02/02	75.1911(a)(4)	\$ 55.00	\$ 55.00
7678122	02/02/02	75.400	\$ 55.00	\$ 55.00
7678123	02/02/02	75.1910(j)	\$ 55.00	\$ 55.00
7677751	02/06/02	75.333(h)	\$ 55.00	\$ 55.00
7677752	02/07/02	75.400	\$ 55.00	\$ 55.00
7677753	02/08/02	75.1911(a)(4)	\$ 55.00	\$ 55.00
7677754	02/09/02	75.400	\$ 475.00	\$ 210.00
7677755	02/09/02	75.1910(j)	\$ 55.00	\$ 55.00
7677756	02/11/02	77.1104	\$ 55.00	\$ 55.00
7677757	02/12/02	77.1104	\$ 475.00	\$ 210.00
7677758	02/12/02	77.208(a)	\$ 475.00	\$ 210.00
7677759	02/12/02	77.404(a)	\$ 55.00	\$ 55.00
7678008	02/15/02	75.807	\$ 55.00	\$ 55.00
7678304	02/19/02	75.601-1	\$ 55.00	\$ 55.00
7678305	02/19/02	75.512	\$ 475.00	\$ 210.00
7678306	02/19/02	75.512	\$ 55.00	\$ 55.00
TOTAL			\$3,145.00	\$1,820.00

SE 2003-6

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7677764	02/23/02	75.1403	\$ 55.00	\$ 55.00
7677765	02/25/02	77.512	\$ 55.00	\$ 55.00
7677766	02/25/02	77.205(b)	\$ 55.00	\$ 55.00
7677767	02/26/02	75.202(a)	\$ 475.00	\$ 210.00
7677768	02/27/02	77.1104	\$ 55.00	\$ 55.00
7677769	02/28/02	75.333(c)	\$ 55.00	\$ 55.00
7677770	03/01/02	75.400	\$ 55.00	\$ 55.00
7678319	03/01/02	75.807	\$ 55.00	\$ 55.00
7678320	03/01/02	75.512	\$ 55.00	\$ 55.00
7678321	03/01/02	75.1702	\$ 55.00	\$ 55.00
7678009	03/04/02	75.807	\$ 55.00	\$ 55.00
7678810	03/04/02	77.505	\$ 55.00	\$ 55.00
7678811	03/04/02	77.507	\$ 55.00	\$ 55.00

7678812	03/04/02	77.512	\$ 55.00	\$ 55.00
7678814	03/04/02	77.516	\$ 55.00	\$ 55.00
7678015	03/04/02	77.502	\$ 55.00	\$ 55.00
3018490	03/06/02	75.360(f)	\$ 55.00	\$ 55.00
7677772	03/07/02	75.1703	\$ 55.00	\$ 55.00
7677773	03/07/02	75.1703	\$ 55.00	\$ 55.00
TOTAL			\$1,465.00	\$1,200.00

SE 2003-7

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7677774	03/08/02	77.502	\$ 55.00	\$ 55.00
7669812	03/09/02	75.1403	\$ 55.00	\$ 55.00
7669813	03/09/02	75.807	\$ 475.00	\$ 210.00
7677776	03/12/02	75.400	\$ 55.00	\$ 55.00
7678501	03/13/02	50.10	\$ 55.00	\$ 55.00
7678502	03/13/02	50.12	\$ 55.00	\$ 55.00
7678504	03/13/02	75.1702	\$ 475.00	\$ 210.00
7676680	03/15/02	75.400	\$ 55.00	\$ 55.00
7677777	03/15/02	75.400	\$ 55.00	\$ 55.00
7677778	03/15/02	75.333(h)	\$ 55.00	\$ 55.00
7677968	03/15/02	75.400	\$ 55.00	\$ 55.00
7678505	03/15/02	75.1405	\$ 55.00	\$ 55.00
7678506	03/15/02	75.603	\$ 475.00	\$ 210.00
7678507	03/15/02	75.809	\$ 55.00	\$ 55.00
7677779	03/16/02	75.220(a)	\$ 475.00	\$ 210.00
7677780	03/16/02	75.333(h)	\$ 55.00	\$ 55.00
7677969	03/16/02	75.400	\$ 55.00	\$ 55.00
7677970	03/16/02	75.400	\$ 55.00	\$ 55.00
7677836	03/18/02	75.400	\$ 475.00	\$ 210.00
TOTAL			\$3,145.00	\$1,820.00

SE 2003-8

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7669814	03/19/02	75.203(e)(2)	\$ 55.00	\$ 55.00
7676681	03/19/02	75.400	\$ 55.00	\$ 55.00
7676682	03/19/02	75.400	\$ 475.00	\$ 210.00
7676683	03/21/02	75.1106-5(a)	\$ 475.00	\$ 210.00
7677781	03/21/02	75.400	\$ 55.00	\$ 55.00

7677782	03/21/02	75.503	\$ 55.00	\$ 55.00
7677784	03/23/02	75.1911(a)(4)	\$ 55.00	\$ 55.00
7677785	03/23/02	75.400	\$ 55.00	\$ 55.00
7677786	03/23/02	75.1911(a)(4)	\$ 55.00	\$ 55.00
7677981	03/23/02	75.333(h)	\$ 55.00	\$ 55.00
7678171	03/23/02	75.400	\$ 475.00	\$ 210.00
4871231	03/25/02	75.1914(a)	\$ 55.00	\$ 55.00
7678509	03/25/02	75.202(a)	\$ 760.00	\$ 350.00
3018491	03/26/02	75.1403-10(e)	\$ 55.00	\$ 55.00
3018492	03/27/02	75.400	\$ 55.00	\$ 55.00
3018493	03/27/02	75.333(b)(4)	\$ 55.00	\$ 55.00
4871232	03/27/02	75.400	\$ 55.00	\$ 55.00
7676684	03/28/02	75.400	\$ 55.00	\$ 55.00
7677685	03/29/02	75.400	\$ 55.00	\$ 55.00
TOTAL			\$3,010.00	\$1,805.00

SE 2003-9

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7678176	03/30/02	75.1100-3	\$ 55.00	\$ 55.00
7677845	04/02/02	75.333(h)	\$ 55.00	\$ 55.00
7677846	04/02/02	75.1403-8(e)	\$ 55.00	\$ 55.00
7677443	04/03/02	75.1100-2(f)	\$ 55.00	\$ 55.00
7677444	04/03/02	75.220(a)(1)	\$ 55.00	\$ 55.00
7677445	04/03/02	41.20	\$ 55.00	\$ 55.00
7677446	04/04/02	75.220(a)(1)	\$ 55.00	\$ 55.00
7677847	04/04/02	75.606	\$ 557.00	\$ 250.00
7677992	04/05/02	75.517	\$ 55.00	\$ 55.00
7677993	04/06/02	75.604(b)	\$ 340.00	\$ 140.00
7677447	04/08/02	75.1100-1(f)	\$ 55.00	\$ 55.00
7677448	04/08/02	75.360(b)(8)	\$ 55.00	\$ 55.00
7677848	04/08/02	75.1100-3	\$ 55.00	\$ 55.00
7677849	04/09/02	75.400	\$ 55.00	\$ 55.00
7669365	04/10/02	75.400	\$ 55.00	\$ 55.00
7677850	04/10/02	75.1100-3	\$ 55.00	\$ 55.00
7677851	04/10/02	75.400	\$ 55.00	\$ 55.00
7677852	04/10/02	75.503	\$ 55.00	\$ 55.00
7678019	04/10/02	75.900	\$ 340.00	\$ 140.00
TOTAL			\$2,117.00	\$1,410.00

SE 2003-10

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7678020	04/10/02	75.340(a)(2)(i)	\$ 55.00	\$ 55.00
7678021	04/10/02	75.1403	\$ 55.00	\$ 55.00
7678022	04/10/02	75.807	\$ 55.00	\$ 55.00
7678023	04/10/02	75.202(a)	\$ 340.00	\$ 140.00
7677449	04/11/02	75.360(e)	\$ 55.00	\$ 55.00
7677450	04/11/02	75.202(a)	\$ 55.00	\$ 55.00
7677853	04/12/02	75.400	\$ 55.00	\$ 55.00
7677854	04/12/02	75.400	\$ 55.00	\$ 55.00
7677855	04/13/02	75.202(a)	\$ 340.00	\$ 140.00
7677994	04/13/02	75.1403	\$ 55.00	\$ 55.00
7677995	04/15/02	75.400	\$ 55.00	\$ 55.00
7678359	04/15/02	75.900-4	\$ 55.00	\$ 55.00
4870868	04/16/02	75.1403	\$ 340.00	\$ 140.00
7677856	04/16/02	75.202(a)	\$ 55.00	\$ 55.00
7677857	04/16/02	75.1106-3(a)(2)	\$ 55.00	\$ 55.00
7677996	04/16/02	75.1906(i)	\$ 55.00	\$ 55.00
7677997	04/16/02	75.400	\$ 55.00	\$ 55.00
7670056	04/17/02	75.1100-3	\$ 55.00	\$ 55.00
7670057	04/17/02	75.400	\$ 340.00	\$ 140.00
		TOTAL	\$2,185.00	\$1,385.00

SE 2003-11

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7678361	04/18/02	75.601-1	\$ 55.00	\$ 55.00
7678362	04/18/02	75.902	\$ 340.00	\$ 140.00
7678183	04/19/02	75.512	\$ 55.00	\$ 55.00
7677998	04/23/02	75.1403	\$ 55.00	\$ 55.00
7677999	04/24/02	75.1106-3(a)(2)	\$ 55.00	\$ 55.00
7678000	04/24/02	75.340(a)(2)(i)	\$ 55.00	\$ 55.00
7677452	04/25/02	75.1403-8(b)	\$ 55.00	\$ 55.00
7677858	04/25/02	75.202(a)	\$ 340.00	\$ 140.00
7678366	04/25/02	75.512	\$ 340.00	\$ 140.00

7678601	04/25/02	75.1403	\$ 55.00	\$ 55.00
7672693	04/27/02	75.1914(a)	\$ 340.00	\$ 140.00
7677859	04/29/02	75.904	\$ 55.00	\$ 55.00
7669372	05/01/02	75.333(h)	\$ 760.00	\$ 350.00
7669373	05/01/02	75.400	\$ 55.00	\$ 55.00
7677860	05/03/02	77.502	\$ 55.00	\$ 55.00
7678194	05/03/02	75.807	\$ 55.00	\$ 55.00
7677861	05/04/02	75.1100-3	\$ 55.00	\$ 55.00
7677862	05/04/02	75.1100-2(f)	\$ 55.00	\$ 55.00
7669650	05/07/02	75.370(a)(1)	\$ 55.00	\$ 55.00
TOTAL			\$2,890.00	\$1,680.00

SE 2003-12

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
7669651	05/07/02	75.1202-1(b)(3)	\$ 55.00	\$ 55.00
7672696	05/07/02	77.206(c)	\$ 55.00	\$ 55.00
7672697	05/07/02	77.206(c)	\$ 55.00	\$ 55.00
7672700	05/07/02	77.206(c)	\$ 55.00	\$ 55.00
7672801	05/07/02	77.1104	\$ 55.00	\$ 55.00
7678704	05/07/02	77.202	\$ 55.00	\$ 55.00
7678705	05/07/02	77.202	\$ 259.00	\$ 100.00
7677863	05/08/02	77.1301(c)(11)	\$ 55.00	\$ 55.00
7677864	05/09/02	75.606	\$ 259.00	\$ 100.00
7672803	05/10/02	75.1722(b)	\$ 259.00	\$ 100.00
7672804	05/10/02	75.333(h)	\$ 55.00	\$ 55.00
7678706	05/13/02	75.202(a)	\$ 259.00	\$ 100.00
7677865	05/14/02	75.400	\$ 55.00	\$ 55.00
7677866	05/15/02	75.1714-2(c)	\$ 55.00	\$ 55.00
7677867	05/15/02	77.1101-7(b)	\$ 55.00	\$ 55.00
7672805	05/16/02	75.202(a)	\$ 55.00	\$ 55.00
7672806	05/16/02	75.202(a)	\$ 55.00	\$ 55.00
7672807	05/16/02	75.807	\$ 55.00	\$ 55.00
7672808	05/16/02	75.807	\$ 55.00	\$ 55.00
TOTAL			\$1,861.00	\$1,225.00

SE 2003-13

Citation/ Order No.	Date	30 C.F.R.	Assessment	Settlement
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7672809	05/18/02	75.202(a)	\$ 55.00	\$ 55.00
7672822	05/18/02	75.1403-7(j)	\$ 259.00	\$ 100.00
7678418	05/18/02	75.220(a)(1)	\$ 55.00	\$ 55.00
7672810	05/20/02	75.1403	\$ 55.00	\$ 55.00
7678707	05/22/02	75.202(a)	\$ 259.00	\$ 100.00
7678708	05/23/02	75.1403	\$ 55.00	\$ 55.00
7678924	05/24/02	75.701	\$ 55.00	\$ 55.00
7672812	05/28/02	75.202(a)	\$ 55.00	\$ 55.00
7672813	05/29/02	75.202(a)	\$ 55.00	\$ 55.00
7677869	05/29/02	75.202(a)	\$ 55.00	\$ 55.00
4871105	05/30/02	75.403	\$ 277.00	\$ 115.00
7672815	05/30/02	75.1101-10	\$ 55.00	\$ 55.00
7677870	05/30/02	75.380(d)(1)	\$ 55.00	\$ 55.00
7677871	05/30/02	75.1100-2(f)	\$ 55.00	\$ 55.00
4871106	05/31/02	75.1403	\$ 55.00	\$ 55.00
7677461	05/31/02	75.202(a)	\$ 55.00	\$ 55.00
7677872	06/01/02	75.1100-1(a)	\$ 55.00	\$ 55.00
4871107	06/03/02	75.1403-8(b)	\$ 55.00	\$ 55.00
4871108	06/03/02	75.1403-8(b)	\$ 55.00	\$ 55.00
		TOTAL	\$1,675.00	\$1,195.00

After review and consideration of the pleadings, arguments and submissions in support of the settlement motion, I find the proposed settlement is reasonable and in the public interest. Pursuant to 29 C.F.R. § 2700.31, the motion is **GRANTED**, and the settlement is **APPROVED**.

ORDER

Respondent is **ORDERED** to pay a total civil penalty of \$26,082.00 in satisfaction of the violations in question. Payment is to be made to MSHA within 30 days of the date of this proceeding. Also, within the same 30 days, the Secretary is **ORDERED** to delete the S&S findings on the five subject citations and to reclassify negligence from “low” to “none” on the specified citation. Upon receipt of full payment and modification of the citations, these proceedings are **DISMISSED**.

David F. Barbour
Administrative Law Judge

Distribution: (Certified Mail)

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