

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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July 15, 1998

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. VA 96-21-M
Petitioner	:	A. C. No. 44-00040-05559
v.	:	
	:	Eastern Ridge Lime Company, L P
EASTERN RIDGE LIME COMPANY, L P,	:	
Respondent	:	

DECISION ON REMAND

Before: Judge Weisberger

This matter is before me based on a remand order issued by the Commission on July 2, 1998, for further consideration consistent with the decision in the case issued by the United States Court of Appeals for the Fourth Circuit (*Eastern Ridge Lime, L P v. FMSHRC* No. 97-1579 (4th Cir. April 13, 1998)). In its decision, the Courts of Appeals remanded for further fact finding and analysis of the penalties to be assessed (slip op. at 7).

In order to clarify my previous decision, (19 FMSHRC 398 (February 1997)), and upon reconsideration, I find that, in assessing a penalty, and evaluating the level of gravity of the cited violations, it is not necessary to make a specific finding of causation. The high level of gravity is based on the fact that the violation contributed to a fatal roof fall. Further, in evaluating a penalty, I place most weight on my finding that, for the reasons discussed in the original decision, the level of Respondent's negligence constituted aggravated conduct. Specifically, the record establishes that Respondent repeatedly ignored the warnings of its workers regarding observed unsafe conditions. Accordingly, I reiterate my initial findings regarding the penalty to be assessed.

It is **ORDERED** the Respondent shall pay a total civil penalty of \$85,000 for the violations cited in Order No. 4289773 and Citation No. 4389772.

Avram Weisberger
Administrative Law Judge

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