

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

April 15, 2009

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2008-471
Petitioner	:	A.C. No. 46-04168-134618
	:	
v.	:	Docket No. WEVA 2009-252
	:	A.C. No. 46-04168-159504
	:	
WOLF RUN MINING CO.,	:	Sentinel Mine
Respondent	:	

**DECISION APPROVING SETTLEMENT**

Before: Judge Feldman

These proceedings are before me based on petitions for assessment of civil penalty filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, (“Mine Act”), 30 U.S.C. § 815(d). These matters concern Order No. 7101472 in Docket No. WEVA 2008-471 and Order No. 7101465 in Docket No. 2009-252 that allege violations of 30 C.F.R. § 75.220(a)(1) of the mandatory safety standards governing roof control plans. The Secretary asserts that these two violations are attributable to Wolf Run Mining Company’s (“Wolf Run’s”) unwarrantable failure. Section 75.220(a)(1) provides:

Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.

The initial \$163,500.00 proposed penalty included a proposed assessment of \$151,600.00 for the violation in Order No. 7101472 that was designated by the Secretary as “flagrant” in nature. The cited condition occurred when a crosscut had been advanced 43 feet beyond the last row of permanently installed roof support in contravention of the approved roof control plan which limited advancement to 30 feet beyond the last full row of permanent support.

The term “flagrant violation” was introduced in section 110(a)(1) of the Mine Act, as amended by the Mine Improvement and New Emergency Response Act of 2006 (“Miner Act”), 30 U.S.C. § 820(a)(1). A violation is deemed flagrant under this statutory provision if there is “. . . a reckless or repeated failure [by the mine operator] to make reasonable

efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.” *Id.* Under section 110(a)(1) flagrant violations may be assessed a civil penalty as high as \$220,000.00.

The Secretary now has filed a motion to approve a settlement agreement and to dismiss these matters.<sup>1</sup> The settlement terms include reducing the proposed penalty for Order No. 7101472 from \$151,600.00 to \$45,000.00. Based on this reduction, the parties have agreed to reduce the total civil penalty from \$163,500.00 to \$56,900.00 for the two orders in issue. The substantial reduction in penalty is based on the removal of the “flagrant” classification in Order No. 7101472. Although the “flagrant” allegation was initially based on Wolf Run’s alleged repeated violations of several different provisions of its roof control plan<sup>2</sup>, the Secretary now has concluded that Wolf Run’s negligence, while high, does not rise to a level of repeated misconduct that justifies a “flagrant” classification.

I have considered the representations and documentation submitted in these matters and I 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 respondent pay a civil penalty of \$56,900.00 within 30 days of this order in satisfaction of the two orders in issue. Upon receipt of timely payment, the captioned civil penalty cases **ARE DISMISSED**.

Jerold Feldman  
Administrative Law Judge

Distribution:

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

Gayle M. Green, Esq., Office of the Solicitor, U.S. Department of Labor, The Curtis Center,  
Suite 630E, 170 Independence Mall West, Philadelphia, PA 19106-3306

---

<sup>1</sup> These docket proceedings concern Order Nos. 7101472 and 7101465. The parties have also agreed that Wolf Run will pay the proposed assessment of \$6,100.00 for Order No. 7101363 that is not a subject of these proceedings.

<sup>2</sup> For example Order No. 7101472, initially designated as flagrant, cited a violation of the advancement provision of the roof control plan, while Order No. 7101465 cited a violation of the roof control provision that rib corners must be secured with three bolts on five foot centers.

/rps