

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

SEP 10 2014

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. PENN 2011-168
 :
EMERALD COAL RESOURCES, LP :

Before: Nakamura, Acting Chairman; Cohen and Althen, Commissioners

DECISION APPROVING SETTLEMENT

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012), and is before the Commission on review of the Administrative Law Judge’s decision upholding Order Nos. 8007973 and 8007974 for alleged violations of 30 C.F.R. § 75.400 and 30 C.F.R. § 75.360(b)(3), respectively. 35 FMSHRC 2645, 2673 (Aug. 2013) (ALJ). The Judge found that Emerald Coal Resources, LP violated section 75.400, that the violation was “significant and substantial,” and that it was an unwarrantable failure, when it allowed combustible material to accumulate in the mine, including pushing material to the face as part of its cleanup program. *Id.* at 2661-63. She also found that it violated section 75.360(b)(3) when Emerald failed to record the hazardous accumulations in the pre-shift examination log, and that this violation was also “significant and substantial” and an unwarrantable failure. *Id.* at 2666-67.

The Judge further concluded that because Emerald was a “recidivist operator that [had] chosen to ignore MSHA’s § 75.00 standard” and had failed to record the violative conditions, thereby “expos[ing] miners to unknown hazards,” it was appropriate to assess an enhanced penalty amount for each order. *Id.* at 2672. Specifically, she increased the penalty for Order No. 8007973 from \$41,500 to \$90,000 and for Order No. 8007974 from \$32,800 to \$40,000. *Id.* at 2672-73.

Emerald petitioned for discretionary review by the Commission challenging the Judge's findings regarding the fact of violations, as well as the "significant and substantial" and unwarrantable failure designations. It also sought review of the Judge's heightened penalty assessment for Order No. 8007973. The Commission granted the petition for review.

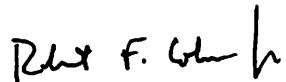
On August 28, 2014, the parties filed a Joint Motion to Approve Settlement pursuant to section 110(k) of the Act, 30 U.S.C. § 820(k), which provides that "[n]o proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission." The parties have agreed that with the exception of a reduction in penalty, Order Nos. 8007973 and 8007974 have been properly adjudicated as set forth in the Judge's decision. According to the proposed settlement, the penalty amount for Order No. 8007973 shall be modified to reflect a penalty of \$70,000, which is the statutory maximum for a non-flagrant violation. The penalty assessment for Order No. 8007974 shall remain at \$40,000, for a total assessment of \$110,000.

We have considered the representations and documentation submitted in this case, and we conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act, 30 U.S.C. § 820(i).

Wherefore, the motion for approval of the settlement is GRANTED. It is ordered that the operator pay a penalty of \$110,000 within 30 days of the date of this order. Upon receipt of payment, this case is dismissed.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

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