

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

NOV 18 2014

SECRETARY OF LABOR,	:	Docket Nos. LAKE 2008-38
MINE SAFETY AND HEALTH	:	LAKE 2008-142
ADMINISTRATION (MSHA)	:	LAKE 2008-525
	:	
v.	:	
	:	
THE AMERICAN COAL COMPANY	:	

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

DECISION

BY THE COMMISSION:

These captioned proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”) are before the Commission pursuant to the Commission’s partial grant of The American Coal Company’s (“American”) petition for discretionary review. Subsequent to our partial grant of review, we stayed briefing pending further order by the Commission.

In its petition, American contends that three notices to provide safeguard (“safeguards”) that were issued by the Secretary of Labor pursuant to section 314(b) of the Mine Act, 30 U.S.C. § 874(b), are facially invalid: Safeguard Nos. 3538483, 7568565, and 7577893. PDR at 2. American requests that the Commission vacate citations issued by the Secretary that allege violations of these safeguards.<sup>1</sup> *Id.*

The Judge concluded that these safeguards are facially valid and denied American’s motion for summary decision on the issue. *The American Coal Co.*, 33 FMSHRC 2636 (Oct. 2011) (ALJ). The parties then filed a motion to approve settlement of the citations contingent upon the understanding that American was not waiving its right to subsequently file a petition for discretionary review with the Commission that challenged the facial validity of the underlying safeguards. On November 14, 2011, the Judge issued a decision approving the parties’ agreement to settle the citations. *The American Coal Co.*, 33 FMSHRC 2803, 2833-34

---

<sup>1</sup> A total of four citations are at issue. Citation Nos. 6667312 and 7490989 allege violations of Safeguard No. 3538483. Citation No. 7490559 alleges a violation of Safeguard No. 7568565. Citation No. 7490851 alleges a violation of Safeguard No. 7577893.

(Nov. 2011) (ALJ). The Judge ordered payment of a total amended penalty of \$9,640 in satisfaction of the four citations at issue.<sup>2</sup> *Id.* at 2833.

On August 30, 2012, the Commission issued a decision in a separate case involving American in which we concluded that Safeguard Nos. 3538483, 7568565, and 7577893 are each facially valid. *The American Coal Co.*, 34 FMSHRC 1963, 1972-80 (Aug. 2012). The principle of *res judicata* precludes American from again challenging the facial validity of these safeguards before the Commission. *Faith Coal Co.*, 19 FMSHRC 1357, 1365 (Aug. 1997). Safeguard Nos. 3538483, 7568565, and 7577893 are each facially valid.

We hereby lift the stay in these cases. The Judge's decision approving settlement of Citation Nos. 6667312, 7490989, 7490559, and 7490851 is affirmed.



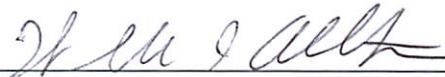
---

Patrick K. Nakamura, Acting Chairman



---

Robert F. Cohen, Jr., Commissioner



---

William I. Althen, Commissioner

---

<sup>2</sup> The record does not clearly establish the amended penalty amount for each individual citation. The Commission's Procedural Rules require settlement motions to include the amount of the penalty proposed by the Secretary and the amount of the penalty agreed to in settlement for each violation. Commission Procedural Rule 31(b), 29 C.F.R. § 2700.31(b). We remind the parties that compliance with our procedural rules is required.

Distribution:

Jason W. Hardin, Esq.  
Fabian & Clendenin  
215 South State Street, Suite 1200  
Salt Lake City, UT 84111-2323  
[jhardin@fabianlaw.com](mailto:jhardin@fabianlaw.com)

Richard S. Anderson, Esq.  
Fabian & Clendenin  
215 South State Street, Suite 1200  
Salt Lake City, UT 84111-2323  
[randerson@fabianlaw.com](mailto:randerson@fabianlaw.com)

Melanie Garris  
Office of Civil Penalty Compliance  
MSHA  
U.S. Dept. Of Labor  
1100 Wilson Blvd., 25<sup>th</sup> Floor  
Arlington, VA 22209-3939

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., Room 2220  
Arlington, VA 22209-2296

Administrative Law Judge Richard W. Manning  
Federal Mine Safety & Health Review Commission  
Office of Administrative Law Judges  
721 19<sup>th</sup> Street, Suite 443  
Denver, CO 80202-5268