

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

December 16, 2010

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
	:	Docket Nos. WEVA 2006-654, et al.
v.	:	
	:	
ARACOMA COAL COMPANY, INC.	:	

BEFORE: Jordan, Chairman; Duffy, Young, and Cohen Commissioners¹

ORDER ON MOTION FOR RECONSIDERATION

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006). On December 18, 2008, the parties filed with the Chief Judge a joint motion to approve settlement of 102 penalty dockets consisting of 1,302 separate citations and orders, covering two mines. The joint motion enumerated the 102 penalty dockets and 1,302 citations and orders in Addendum 1 and Addendum 2 attached to the motion. Chief Judge Robert Lesnick issued a Decision Approving Settlement/Order to Pay on December 23, 2008. 30 FMSHRC 1160 (Dec. 2008) (ALJ). On January 22, 2009, the Commission on its own motion, directed review of the judge’s decision approving the settlement.

On January 23, 2009, the parties filed with the judge a Joint Motion to Correct Settlement Order. The motion explained that the enumeration of the penalty dockets and of the citations and orders in Addendum 1 and Addendum 2 of the settlement motion had contained inaccuracies. Specifically, it had inadvertently contained 21 citations which were not part of the settlement, and contained a number of errors in associating citations and orders with the correct penalty docket. In their joint brief filed with the Commission, the parties noted the motion to the judge

¹ A new Commissioner possesses legal authority to participate in pending cases, but such participation is discretionary. *Mid-Continent Res., Inc.*, 16 FMSHRC 1218 (June 1994). In the interest of efficient decision making, Commissioner Patrick K. Nakamura has elected not to participate in this matter.

and pointed out that pursuant to Commission Procedural Rule 69(c), 29 C.F.R. § 2700.69(c), the judge did not have authority to correct the clerical errors without leave of the Commission. *Jt. Br.* at 1 n.1.

On November 17, 2010, the Commission issued a decision affirming the judge's approval of the settlement. 32 FMSHRC ___, Nos. WEVA 2006-654, et. al. (Nov. 17, 2010). On November 24, 2010, the Secretary filed a motion for reconsideration pursuant to Commission Procedural Rule 78(a), 29 C.F.R. § 2700.78(a), on behalf of the parties, which asked the Commission to reconsider its decision of November 17, 2010, so as to address the Joint Motion to Correct Settlement Order previously filed with the Chief Judge.

The parties' joint motion to correct the Chief Judge's Decision Approving Settlement/Order to Pay is granted, and pursuant to the January 23, 2009 letter from the Solicitor of Labor to Judge Lesnick, the Judge's December 23, 2008 Decision shall be corrected as follows:

1. In the caption of the Decision, Docket Nos. WEVA 2007-444 and WEVA 2007-525 shall be deleted;
2. Docket Nos. WEVA 2006-659 and WEVA 2006-661 shall be added to the caption on the first cover page of the Decision;
3. In the first paragraph of the Decision, the reference to "1,302 citations and orders" shall be changed to "1,281 citations and orders;"
4. In both the first paragraph of the Decision and in footnote 1 on page 1 of the Decision, the amount of the total assessment shall be changed from "\$2,806,027 to \$2,803,293;"
5. In relation to Addenda 1 and 2 of the parties' Motion to Approve Settlement, incorporated by reference into the court's December 23, 2008 Decision Approving Settlement/Order to Pay:
 - (a) the 20 citations set forth within Docket No. WEVA 2007-444 on pages 9 and 10 of Addendum 1 (relating to the Aracoma Alma Mine #1) shall be deleted, and
 - (b) the one citation set forth within Docket No. WEVA 2007-525 on page 3 of Addendum 2 (relating to the Hernshaw Mine) shall be deleted;
6. That the following 19 citation numbers previously associated with Docket No. WEVA 2006-660 – set forth on page 3 of Addendum 1 (relating to the Aracoma Alma Mine #1) – shall be associated with Penalty Docket No. WEVA 2006-659:

7241394, 7241396, 7244374, 7244375, 7244376, 7244377,
7244378, 7244379, 7244380, 7244381, 7249273, 7250537,
7250538, 7252615, 7252805, 7252808, 7252810, 7252811,
7252812;

7. That the following 20 citation numbers – set forth on pages 23 and 24 of Addendum 1 (relating to the Aracoma Alma Mine #1) – shall be associated with Penalty Docket No. WEVA 2006-660:

7241398, 7241399, 7241400, 7244382, 7244383, 7244384,
7244386, 7252618, 7252619, 7252630, 7252640, 7252834,
7252838, 7252844, 7252845, 7252850, 7252855, 7252857,
7252858, 7252859;

8. That the following two citation numbers – set forth on page 24 of Addendum 1 (relating to the Aracoma Alma Mine #1) – shall be associated with Penalty Docket No. WEVA 2006-661:

7252866, 7253425;

9. That the following six citation and order numbers – set forth on pages 23 and 24 of Addendum 1 (relating to the Aracoma Alma Mine #1) – shall be associated with Penalty Docket No. WEVA 2008-1577:

6612795, 7182014, 7265918, 7265920, 7273497, 7280540;

10. That the following 30 citation numbers – set forth on pages 5 and 6 of Addendum 2 (relating to the Hernshaw Mine) – shall be associated with Penalty Docket No. 2008-1567:

6616651, 6616652, 6616653, 6616654, 6616655, 6616658,
6616659, 6616660, 6616663, 6616670, 6616672, 6616673,
6616679, 6616680, 6616681, 6616682, 6616717, 7279591,
7279594, 7279595, 7279596, 7279599, 7279606, 7279607,
7279608, 7279609, 7279610, 7279612, 7279615, 7279618.

Accordingly, this matter is remanded to the Chief Judge to correct the settlement order as indicated above to conform to the corrections submitted by the parties.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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