

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

CONTEST PROCEEDINGS

**FEDERAL MINE SAFETY &
HEALTH REVIEW COMMISSION
2012 FEB 23 AM 8:51**

IN RE: LEGACY MASSEY COMPANIES

CIVIL PENALTY PROCEEDINGS²

ALJ Margaret Miller

**THE LEGACY MASSEY COMPANIES'
NOTICE OF WITHDRAWAL AND MOTION TO DISMISS**

Pursuant to Commission Rule 10, 29 C.F.R. §2700.10, the legacy Massey companies identified herein provide notice of the withdrawal of their contest of the citations, orders and proposed assessments in the proceedings referenced herein and move the Commission's Administrative Law Judge to dismiss these proceedings with prejudice. In support of this Notice and Motion, the legacy Massey companies (defined below) state the following:

1. Massey Energy Company, Inc. ("Massey"), had numerous direct and indirect subsidiaries as of May 31, 2011 that operated mines subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, as amended ("Mine Act"). The direct and indirect subsidiaries of Massey are referred to herein as "legacy Massey companies."

2. The Secretary of Labor, Mine Safety and Health Administration ("Secretary"), issued citations and orders to legacy Massey companies on and before June 1, 2011. The

¹ The affected Contest Proceedings are identified in Exhibits 1 and 3. Exhibit 1 identifies Contest Proceedings which contain citations and/or orders which were later contested and are also contained in Civil Penalty Proceedings in Exhibit 2. Exhibit 3 identifies Contest Proceedings which contain citations and/or orders that were not assessed on December 6, 2011.

² The affected Civil Penalty Proceedings are identified in Exhibit 2.

Secretary also issued citations and orders to legacy Massey companies after June 1, 2011, as a result of conditions which existed or conduct which occurred prior to or on June 1, 2011.

3. The legacy Massey companies were acquired by Alpha Natural Resources, Inc. (“Alpha”) on June 1, 2011.³

4. Alpha has agreed that it will withdraw, or cause its affiliates to withdraw, its contest and pay up to twenty million, two hundred thirty thousand dollars (\$20,230,000.00) to resolve all citations, orders, and proposed assessments pending before the Commission’s Administrative Law Judges issued to legacy Massey companies on or before June 1, 2011 as well as those issued after June 1, 2011 as a result of conditions which existed or conduct which occurred prior to or on June 1, 2011, as identified in Exhibits 1, 2, 3 and 4 (“affected citations and/or orders”). Consistent with the agreement, Alpha agrees to pay nineteen million, eight hundred fifty-five thousand, four hundred eighty three dollars (\$19,855,483.00) (“penalty”) to resolve the affected citations and/or orders.

5. Those cases pending before the Commission’s Administrative Law Judges which contain only affected citations and/or orders are referred to herein as “affected cases” and are identified in Exhibits 1, 2 and 3. Those cases pending before the Commission’s Administrative Law Judges which contain both (a) affected citations and/or orders and (b) citations and/or orders which are not encompassed by this Notice and Motion are identified in Exhibit 4.

6. Alpha, on behalf of each legacy Massey company which is a party to an affected case pending before the Commission’s Administrative Law Judges, hereby provides notice of the

³ Massey is now known as Alpha Appalachia Holdings, Inc. Alpha has become the ultimate parent of all legacy Massey companies.

withdrawal of each contest of the affected citations and/or orders in each affected case identified in Exhibits 1, 2, and 3 and moves to dismiss each proceeding with prejudice.

7. Alpha, on behalf of each legacy Massey company which is a party to a case pending before a Commission Administrative Law Judge identified in Exhibit 4, withdraws its contest and moves to dismiss the proceedings related to each affected citation and order in the cases identified in Exhibit 4.

8. The relevant legacy Massey companies have previously contested the proposed assessment for each affected citation and order contained in each case identified in Exhibits 1 and 2. Alpha has agreed to withdraw or cause its affiliates to withdraw the contest of these proposed assessments. Each proposed assessment is attached as an exhibit to each Petition for Assessment of Civil Penalty filed by the Secretary. Upon information and belief, each proposed assessment accurately sets forth the operator's size and its violation history. Further, upon information and belief, the proposed assessment accurately sets forth any good faith abatement of each citation and order. The penalty is appropriate in light of the size of each relevant legacy Massey company and each such legacy Massey company will be able to continue its business despite the payment of the penalty. Consequently, payment of the penalty is consistent with Section 110(i) of the Mine Act.

9. The contest proceedings identified in Exhibit 3 are contests of citations and/or orders issued as a result of conditions which existed or conduct which occurred prior to or on June 1, 2011 that were not assessed on December 6, 2011. Alpha, on behalf of each legacy Massey company which is a party to a contest proceeding identified in Exhibit 3, moves the Court, pursuant to Commission Rule 11, 29 C.F.R. §2700.11, to withdraw each Notice of Contest identified in Exhibit 3 and to dismiss the proceeding with prejudice.

10. In the proceedings identified in Exhibit 4, each relevant legacy Massey company has previously contested the proposed assessment for each affected citation and/or order contained in those proceedings. Alpha has agreed to withdraw or cause its affiliates to withdraw the contest of these proposed assessments. Each proposed assessment is attached as an exhibit to each Petition for Assessment of Civil Penalty. With respect to each affected citation and/or order in the cases identified in Exhibit 4, upon information and belief, each proposed assessment accurately sets forth the operator's size and its violation history. Further, upon information and belief, the proposed assessment accurately sets forth any good faith abatement of each affected citation and/or order. The penalty for each affected citation and/or order is appropriate in light of the size of each relevant legacy Massey company and each such legacy Massey company will be able to continue its business despite the penalty. Consequently, payment of the penalty for all affected citations and/or orders is consistent with Section 110(i) of the Mine Act. The remaining citations and/or orders contained in the cases identified in Exhibit 4 are not the subject of this Notice and Motion.

11. Alpha and the Secretary have diligently worked to ensure the accuracy of the information provided in Exhibits 1, 2, 3, and 4. However, it is possible that a case that contains an affected citation and/or order has been erroneously omitted from Exhibits 1, 2, 3, or 4. Because every citation and/or order issued to any legacy Massey company as a result of conditions which existed or conduct which occurred prior to or on June 1, 2011 are intended to be the subject of this Notice and Motion, Alpha reserves the right to amend Exhibits 1, 2, 3, or 4 as appropriate and upon agreement of the parties.

12. Alpha believes the withdrawal of the contest of each affected citation and/or order and its agreement to pay \$19,855,483.00 to resolve each affected citation and/or order, consistent

with the agreement, is in the public interest and will further the intent and purpose of the Mine Act.

13. The parties have agreed that Alpha's payment of the affected citations and/or orders will not constitute an admission of a violation by any legacy Massey company, Alpha, any of their affiliates, or any individual of any laws, including local, state or federal statutes or any principle of common law, except for purposes of the Mine Act, and also consistent with the terms set forth in the agreement relating to Section 110(c) cases. Furthermore, the parties have also agreed that Alpha's payment of the affected citations and/or orders is not and may not be considered an adjudication on the merits. Finally, if any affected citation and/or order forms the basis of a charge against an individual pursuant to Section 110(c) of the Mine Act, Alpha's payment of these affected citations and/or orders will not prejudice the rights that any individual may have had but for the payment of the civil penalty as set forth in the agreement. Nor will the payment by Alpha of any affected citation and/or order be construed in any such Section 110(c) case as an admission by any legacy Massey company, Alpha, its affiliates, or any individual of any aspect of these affected citations and/or orders including, without limitation, the fact of any violation, the gravity of any alleged violation and/or that any individual acted with any negligence whatsoever in allowing an alleged condition or practice to exist. In any such proceeding pursuant to Section 110(c) of the Mine Act, MSHA and Alpha agree that the parties to any such proceeding will bear the same burden of proof on all elements of any charge or defense, if any, which would have existed in the absence of the payment of the underlying dockets.

WHEREFORE, for these reasons, Alpha, on behalf of the legacy Massey companies, withdraws its contest of each affected citation and/or order contained within each case identified

in Exhibits 1, 2 and 3 and moves for an Order dismissing each case with prejudice. Alpha, on behalf of each legacy Massey company, withdraws its contest of each affected citation and/or order contained in each case identified in Exhibit 4 and moves for an order dismissing each affected citation and/or order from these cases with prejudice. Further, Alpha moves for an order directing Alpha, on behalf of the Massey legacy companies, to remit \$19,855,483.00 to the Secretary within thirty (30) days in full satisfaction of each affected citation and/or order. Finally, Alpha moves for leave to amend Exhibits 1, 2, 3, or 4 and/or to add or subtract the cases affected by this Notice and Motion as appropriate and upon the agreement of the parties.

Respectfully Submitted,

ALPHA NATURAL RESOURCES, INC.,

on behalf of each legacy Massey company⁴

⁴ Alex Energy, Inc., Alliance Coal Corporation, Aracoma Coal Company, Inc., A.T. Massey Coal Company, Inc., Bandmill Coal Corp., Bandytown Coal Company, Big Bear Mining Company, Belfry Coal Corporation, Ben Creek Coal Company, Big Laurel Mining Corporation, Black King Mine Development, Black Mountain Resources, LLC, Bluff Spur Coal Company, Boone Energy Company, Bull Mountain Mining Corporation, Cave Spur Coal, LLC, Clear Fork Coal Company, Cloverlick Coal Company, LLC, Crystal Fuels Company, Cumberland Equipment Corporation, Cumberland Resources Corporation, Delbarton Mining Company, Dehue Coal Company, Dorchester Enterprises, Inc., Duchess Coal Company, Eagle Energy, Inc., Elk Run Coal Company, Inc., Endurance Mining, Exeter Coal Corporation, Foglesong Energy Company, Freedom Energy Mining Company, Goals Coal Company, Green Valley Coal Company, Greycagle Coal Company, Guest Mountain Mining Corporation, Harlan Reclamation Services, LLC, Hazy Ridge Coal Company, High Splint Coal LLC, Highland Mining Company, Hopkins Creek Coal Company, Independence Coal Company, Inc., Jacks Branch Coal Company, Joboner Coal Company, JST Mining Company, JST Resources, LLC, Kanawha Energy, Knox Creek Coal Corp., Logan County Mine Services, Inc., Logan Mining Company, Long Fork Coal Company, Lynn Branch Coal Company, Maggard Branch Coal, LLC, Majestic Mining, Inc., Mammoth Coal Company, Marfork Coal Company, Martin County Coal Corp., Massey Energy Company, Massey Coal Services, Inc., Meadow Branch Mining Corporation, Mill Branch Coal Corporation, Mountain Management, Inc., New Ridge Mining Company d/b/a Coalgood Energy Co., Nicholas Energy Company, Nine Mine Spur, LLC, North Fork Coal Corporation, Omar Mining Company, Osaka Mining Corporation, Panther Mining, LLC, Peerless Eagle Coal Company, Performance Coal Company, Peter Cave Mining Co., Pigeon Creek Processing Corporation, Pilgrim Mining Company, Inc., Powell River Resources Corporation, Power Mountain Coal Company, Progress Coal Company, Rawl Sales & Processing Company, Inc., Road Fork Development Company, Robinson-Phillips Coal Company, Rockridge Coal Company, Roda Resources, LLC, Rostraver Energy Company, Rum Creek Coal Sales, Russell Fork Coal Company, Shannon-Pocahontas Mining Company, Shannon-Pocahontas Coal Corporation, Sidney Coal Company, Inc. d/b/a Rockhouse Energy Mining, Sidney Coal Company, Inc. d/b/a M3 Energy, Sidney Coal Company, Inc. d/b/a Process Energy, Sidney Coal Company, Inc. d/b/a Solid Energy Mining, Sidney Coal Company, Inc. d/b/a Clean Energy Mining, Sidney Coal Company, Inc. d/b/a Mount Sterling Energy Mining, Sidney Coal Company, Inc., Spartan Mining Company, Stillhouse Mining, LLC, Stirrat Coal Company, Stone Mining Company, Support Mining Company d/b/a Inman Energy, Sycamore Fuels, Inc., Talon Loadout Company, T.C.H. Coal Company, Tennessee Energy Corporation, Tennessee Consolidated Coal Company, Thunder Mining, Company, Town Creek Coal Company, Trace Creek Coal Company, Vantage Mining Company, West Kentucky Energy Company, White Buck Coal Company, Williams Mountain Coal Company, Winifrede Coal Corporation, Wyomac Coal Company, Mass Transport, Inc., Trace Transport, Inc. Elk Run Line Crew, Green Valley Trucking, New Ridge Mining Reclamation, New River Energy Corporation, Roadfork Development-Maysville & Black River, Sidney Line Boring Crew, and Spartan Mining d/b/a Trace Transport, Inc.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of "THE LEGACY MASSEY COMPANIES' NOTICE OF WITHDRAWAL AND MOTION TO DISMISS" was served via electronic mail and Federal Express Mail on this 22nd day of February, 2012, to the following:

Derek Baxter, Esquire
U.S. Department of Labor
Mine Safety and Health Administration
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247



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