

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
601 NEW JERSEY AVENUE N.W., SUITE 9500
WASHINGTON, D.C. 20001
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HILDA L. SOLIS, SECRETARY OF LABOR,	:	ALJ JEROLD FELDMAN
UNITED STATES DEPARTMENT OF LABOR,	:	
FEDERAL MINE SAFETY AND HEALTH	:	CIVIL PENALTY PROCEEDING
ADMINISTRATION (MSHA),	:	
	:	Docket Nos. WEVA 2009-1;
Petitioner,	:	2009-358; 2009-376; 2009-377
	:	2009-652; 2009-892; 2009-893
v.	:	2009-1105; 2009-1301; 2009-1302
	:	2009-1604; 2009-1669; 2009-1742
BIG RIVER MINING, LLC,	:	2009-1989; 2009-1990; 2010-191
	:	2010-192; 2010-355; 2010-473
Respondent	:	2010-558; 2010-559; 2010-677
	:	
	:	Mine: Broad Run Mine
	:	Mine ID 46-09136

SETTLEMENT AGREEMENT

The Secretary has filed a Motion for Decision and Settlement Agreement to which Respondent has agreed. The citations and orders involved in the above-captioned cases are affirmed, modified, or vacated as follows:

DOCKET NO. WEVA 2009-1

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement	
										Rationale for Modification	
6606037	Inadequate on-shift examination.	75.362(a)(1)	HL	LWD	Y	H	10	104(d)(2)	\$35,700	<p>Reduce penalty to \$26,755</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that some of the underlying hazardous conditions were not present at the time of the on-shift examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>	
6606455	Inadequate insulation on electrical cable.	75.517	HL	PD	Y	M	1	104(a)	\$12,500	<p>Reduce penalty to \$9,375</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the operator was not aware of this condition and the condition existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>	
<p>The remaining nine (9) Citations and Orders at issue in Docket No. WEVA 2009-1 are AFFIRMED and shall remain as issued.</p>									\$9,133	<p>Penalty of \$9,133 AFFIRMED</p> <hr/> <p>Parties agree that all remaining Citations and Orders are affirmed as issued.</p>	
									TOTAL	\$57,333	\$45,263

DOCKET NO. WEVA 2009-358

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement
										Rationale for Modification
7261068	Failure to follow roof control plan.	75.220(a)(1)	HL	F	Y	H	2	104(d)(1)	\$15,200	<p>Reduce penalty to \$10,640</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the operator was not aware of this condition and the condition was not obvious. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
7270484	Failure to follow roof control plan.	75.220(a)(1)	HL	PD	Y	H	1	104(d)(1)	\$8,600	<p>Reduce penalty to \$6,020</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that exposure to the hazardous condition was limited. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
7270488	Inadequate preshift exam.	75.360(b)(1)	HL	F	Y	H	1	104(d)(1)	\$12,900	<p>Reduce penalty to \$4,000</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the operator did conduct preshift examinations of the area and some of the hazardous conditions may not have existed at the time of the examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>

7270489	Inadequate on-shift exam.	75.362(a)(1)	HL	F	Y	H	1	104(d)(1)	\$12,900	<u>Reduce penalty to \$4,000</u> Respondent would present evidence at trial which may demonstrate that the operator did conduct on-shift examinations of the area and some of the hazardous conditions may not have existed at the time of the examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
6606447	Failure to follow approved ventilation plan.	75.370(a)(1)	RL	LWD	Y	H	1	104(d)(2)	\$28,800	<u>Reduce penalty to \$20,160</u> Respondent would present evidence at trial which may demonstrate that the operator was not aware of the condition and the condition may have existed for only a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
The remaining sixteen (16) Citations and Orders at issue in Docket No. WEVA 2009-358 are AFFIRMED and shall remain as issued.									\$41,011	<u>Assessed penalty of \$41,011 AFFIRMED</u> Parties agree that all remaining Citations and Orders are affirmed as issued.
							TOTAL	\$119,411	\$85,831	

DOCKET NO. WEVA 2009-376

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement
										Rationale for Modification
6606120	Failure to provide additional SCSRs.	75.1714-4(c)	UL	LWD	N	H	6	104(d)(2)	\$4000	<p>Amend to a 104(a) citation; MODIFY negligence to "Moderate"; reduce penalty to \$191</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that MSHA had conducted two complete inspections of the mine during which the conditions existed and the conditions were not then cited. Furthermore, the mine was not in production mode at the time and no danger to miners was present. Based on these mitigating circumstances, the Secretary agrees that the Order should be modified to reflect the operator's reduced negligence and a reduction in the penalty is warranted.</p>
6608280	Accumulation of combustible coal dust.	75.400	RL	LWD	Y	H	1	104(d)(1)	\$4,000	<p>Amend to a 104(a) citation; MODIFY negligence to "Moderate"; reduce penalty to \$2,282</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time. Furthermore, the evidence may show that the likelihood of ignition was reduced because the accumulation was wet and a functioning fire suppression system was present in the area. Based on these mitigating circumstances, the Secretary agrees that the Order should be modified to reflect the operator's reduced negligence and a reduction in the penalty is warranted.</p>

<p>The remaining thirteen (13) Citations and Orders at issue in Docket No. WEVA 2009-376 are AFFIRMED and shall remain as issued.</p>	\$32,250	<p>Assessed penalty of \$32,250 AFFIRMED</p> <hr/> <p>Parties agree that all remaining Citations and Orders are affirmed as issued.</p>	
	TOTAL	\$40,250	\$34,723

DOCKET NO. WEVA 2009-1989

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement Rationale for Modification
8019935	Safe access not maintained to area where persons work and travel.	77.205(b)	RL	F	Y	H	1	104(d)(2)	\$10,705	<p>Amend to a 104(a) citation; MODIFY negligence to "Moderate"; gravity to "Unlikely" & non-S&S; reduce penalty to \$586</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the travelway was not accessible and was used only for storage purposes. Based on these mitigating circumstances, the Secretary agrees that the Order should be modified to reflect the operator's reduced negligence and a reduction in the penalty is warranted.</p>
8019938	Roof & ribs not supported to protect persons from falls.	75.202(a)	RL	F	Y	H	1	104(d)(2)	\$15,971	<p>Amend to a 104(a) citation; MODIFY negligence to "Moderate"; gravity to "Unlikely" & non-S&S; reduce penalty to \$874</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that miners did not work or travel in the area in question and the condition existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that the Order should be modified to reflect the operator's reduced negligence and a reduction in the penalty is</p>

											warranted.	
The remaining three (3) Citations and Orders at issue in Docket No. WEVA 2009-1989 are AFFIRMED and shall remain as issued.										\$24,018	Assessed penalty of \$24,018 AFFIRMED Parties agree that all remaining Citations and Orders are affirmed as issued.	
										TOTAL	\$50,694	\$25,478

DOCKET NO. WEVA 2009-1990

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement
										Rationale for Modification
8019717	Cone not attached to lifeline.	75.380(d)(7)(v)	U	F	N	High	10	104(a)	\$6,458	Reduce penalty to \$4,198 Respondent would present evidence at trial which may demonstrate that an air change had been made in the prior week & miners had been instructed by management to place directional cones on the lifeline & the area in question was not a regularly traveled area. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.

8019927	Branch line to refuge alternative not marked with rigid coil.	75.380(d)(7)(vi)(B)	U	F	N	High	18	104(a)	\$7,578	<u>Reduce penalty to \$5,015</u> Respondent would present evidence at trial which may demonstrate that an air change had been made in the prior week & miners had been instructed by management to place coils on the lifeline & the area in question was not a regularly traveled area. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8019928	Refuge alternative not checked for damage by preshift examiner.	75.360(d)	U	F	N	High	2	104(a)	\$7,578	<u>Reduce penalty to \$5,015</u> Respondent would present evidence at trial which may demonstrate that there was no apparent damage to the refuge chamber at the time of inspection. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8019932	Cone not attached to lifeline.	75.380(d)(7)(v)	U	F	N	High	11	104(a)	\$9,634	<u>Reduce penalty to \$7,033</u> Respondent would present evidence at trial which may demonstrate that an air change had been made in the prior week & miners had been instructed by management to place directional cones on the lifeline & the area in question was not a regularly traveled area. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8019837	Electric equipment not properly maintained.	77.502	RL	F	Y	High	1	104(a)	\$9,634	<u>Reduce penalty to \$6,744</u> Respondent would present evidence at trial

											which may demonstrate that the equipment had been recently inspected by an electrical contractor and existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8020091	Mobile equipment not maintained in safe operating condition.	75.1725	RL	PD	Y	High	1	104(a)	\$5,080	Reduce penalty to \$3,556 Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.	
8020092	Electrical equipment not properly maintained.	75.512	RL	PD	Y	High	1	104(a)	\$4,329	Reduce penalty to \$2,814 Respondent would present evidence at trial which may demonstrate that preshift examinations were made on the equipment. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.	
8020100	Mobile equipment not maintained in safe operating condition.	75.1725	RL	PD	N	High	1	104(a)	\$5,080	Reduce penalty to \$3,556 Respondent would present evidence at trial which may demonstrate that the hazardous condition existed for a short period of time and management was not aware of the condition. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.	
8020105	Record of automatic fire device system examinations not being kept.	75.1103-8	RL	LWD	Y	H	1	104(a)	\$2,901	Reduce penalty to \$1,886 Respondent would present evidence at trial which may demonstrate that the operator recently installed the system and the system was still being	

											tested. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
The remaining thirty-three (33) Citations at issue in Docket No. WEVA 2009-1990 are AFFIRMED and shall remain as issued.										\$34,298	Assessed penalty of \$34,298 AFFIRMED Parties agree that all remaining Citations are affirmed as issued.
TOTAL										\$92,570	\$74,115

DOCKET NO. WEVA 2010-191

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement Rationale for Modification
8020291	Accumulation of loose coal, coal fines and coal dust.	75.400	RL	F	Y	H	6	104(d)(2)	\$35,543	Reduce penalty to \$21,326 Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time. Furthermore, the evidence may show that the likelihood of ignition was reduced because the accumulation was still wet. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8020292	Inadequate preshift examination.	75.360(a)(1)	RL	F	Y	H	6	104(d)(1)	\$21,993	Reduce penalty to \$13,196 Respondent would present evidence at trial which may demonstrate that the operator did conduct a preshift examination of the area and some of the hazardous conditions may not have existed at the time of the examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.

The remaining thirteen (2) Orders at issue in Docket No. WEVA 2010-191 are AFFIRMED and shall remain as issued.	\$44,016	Assessed penalty of \$44,016 AFFIRMED Parties agree that all remaining Orders are affirmed as issued.
	TOTAL	\$101,522

DOCKET NO. WEVA 2010-192

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement Rationale for Modification
8020113	Roof & ribs not supported to protect persons from falls.	75.202(a)	RL	F	Y	M	1	104(a)	\$4,329	<u>Reduce penalty to \$2,200</u> Respondent would present evidence at trial which may demonstrate that miners were not exposed to the hazardous condition and the condition existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8019941	Roof & ribs not supported to protect persons from falls.	75.202(a)	RL	F	Y	M	1	104(a)	\$4,329	<u>Reduce penalty to \$2,200</u> Respondent would present evidence at trial which may demonstrate that miners were not exposed to the hazardous condition and the condition existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8019951	Failure to maintain machinery in safe operating condition.	77.404	HL	F	Y	M	1	104(a)	\$6,458	<u>Reduce penalty to \$3,894</u> Respondent would present evidence at trial which may demonstrate that there were no apparent defects in the hydraulic system at the time the Citation was issued. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty

											is warranted.
8019953	Escapeway not maintained at six feet wide.	75.380(d)(4)	RL	F	Y	H	12	104(a)	\$37,416	<p>Reduce penalty to \$20,579</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the operator was not aware of the condition and the conditions may have existed for only a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>	
8020221	Lifeline not located to use for effective escape.	75.380(d)(7)(iv)	U	F	N	H	10	104(a)	\$9,634	<p>Reduce penalty to \$5,299</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the operator was not aware of the condition and the conditions may have existed for only a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>	
8020284	Escapeway not maintained at six feet wide.	75.380(d)(4)	RL	F	Y	H	12	104(a)	\$37,416	<p>Reduce penalty to \$20,579</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the operator was not aware of the condition and the conditions may have existed for only a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>	
The remaining forty-four (44) Citations at issue in Docket No. WEVA 2010-192 are AFFIRMED and shall remain as issued.									\$41,069	<p>Assessed penalty of \$41,069 AFFIRMED</p> <hr/> <p>Parties agree that all remaining Citations are affirmed as issued.</p>	
									TOTAL	\$140,651	\$95,820

DOCKET NO. WEVA 2010-473

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement
										Rationale for Modification
8023201	Roof & ribs not supported to protect persons from falls.	75.202(a)	RL	F	Y	M	1	104(a)	\$3,996	<p><u>Reduce penalty to \$2,438</u></p> <p>Respondent would present evidence at trial which may demonstrate that the operator had previously placed additional support in the location & was not aware that the additional support had become dislodged. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
8023204	Conveyor belts not properly aligned to prevent rubbing.	75.1731(b)	RL	F	Y	M	10	104(a)	\$11,306	<p><u>Reduce penalty to \$6,633</u></p> <p>Respondent would present evidence at trial which may demonstrate that no frictional heat had been created at the time and the condition may have only existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
8023205	Accumulation of loose coal, coal fines and coal dust.	75.400	RL	F	Y	M	10	104(a)	\$18,271	<p><u>Reduce penalty to \$10,963</u></p> <p>Respondent would present evidence at trial which may demonstrate that no immediate ignition source was present & the condition may have only existed for a short period of time. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>

8023206	Damaged conveyor components were not immediately repaired or replaced.	75.1731(a)	RL	F	Y	M	10	104(a)	\$11,306	Reduce penalty to \$6,633 Respondent would present evidence at trial which may demonstrate that the operator was not aware of the condition and may have existed only for a short duration. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8023214	Accumulation of loose coal, coal fines and coal dust.	75.400	RL	F	Y	M	10	104(a)	\$18,271	Reduce penalty to \$10,049 Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time due to a misalignment of the belt. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
The remaining twenty-five (25) Citations at issue in Docket No. WEVA 2009-358 are AFFIRMED and shall remain as issued.									\$31,141	Assessed penalty of \$31,262 is AFFIRMED Parties agree that all remaining Citations are affirmed as issued.
TOTAL									\$94,291	\$67,978

DOCKET NO. WEVA 2010-558

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement Rationale for Modification
8023424	Conveyor belts not properly aligned to prevent rubbing.	75.1731(b)	U	F	N	H	10	104(d)(2)	\$9,882	Reduce penalty to \$6,289 Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time & did not exist during the preshift examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.

8023425	Preshift examiner failed to determine if air is moving in proper direction.	75.360(b)	U	F	N	H	10	104(d)(2)	\$9,882	<u>Reduce penalty to \$6,289</u> Respondent would present evidence at trial which may demonstrate that an examination was made and the condition may not have existed at the time of examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8023429	Operator failed to correct hazard listed in exam book.	75.363(a)	RL	F	Y	H	10	104(d)(2)	\$47,716	<u>Reduce penalty to \$26,243</u> Respondent would present evidence at trial which may demonstrate that the listed hazardous conditions were corrected after listing, but were recurring in nature. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8023430	Power circuits not protected by suitable circuit breakers.	75.900	RL	F	Y	H	1	104(d)(2)	\$12,563	<u>Reduce penalty to \$6,909</u> Respondent would present evidence at trial which may demonstrate that weekly electrical examinations were performed and the conditions were the result of independent acts by miners. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
8023431	Electrical equipment not properly maintained.	75.512	RL	F	Y	H	1	104(d)(2)	\$13,609	<u>Reduce penalty to \$8,165</u> Respondent would present evidence at trial which may demonstrate that an examination was made and the condition may not have existed at the time of examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.

8023452	Power circuits not protected by suitable breakers.	75.900	RL	F	Y	H	10	104(d)(2)	\$41,574	<p>Reduce penalty to \$22,866</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that weekly electrical examinations were performed and the conditions were the result of independent acts by miners. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
8023453	Failure to adequately examine electrical equipment.	75.512	RL	F	Y	H	10	104(d)(2)	\$70,000	<p>Reduce penalty to \$38,500</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that an examination was made and the condition may not have existed at the time of examination and was the result of subsequent independent acts by miners. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
8023455	Circuit breakers not properly marked for identification.	75.904	RL	F	Y	RD	1	104(d)(2)	\$10,705	<p>VACATE</p> <hr/> <p>Labeling was in place & subsequently deemed sufficient by MSHA.</p>
8023456	Circuit breakers not properly marked for identification.	75.904	RL	F	Y	RD	1	104(d)(2)	\$10,705	<p>VACATE</p> <hr/> <p>Labeling was in place & subsequently deemed sufficient by MSHA.</p>
8023457	Circuit breakers not properly marked for identification.	75.904	RL	F	Y	RD	1	104(d)(2)	\$10,705	<p>VACATE</p> <hr/> <p>Labeling was in place & subsequently deemed sufficient by MSHA.</p>

8023459	Receptacles on conveyor power center were not properly identified.	75.517	RL	F	Y	RD	1	104(d)(2)	10,705	Reduce penalty to \$4,817 Respondent would present evidence at trial which may demonstrate that labeling was in place and the operator believed that the labeling was in compliance based on prior MSHA inspections. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.
The remaining two (2) Orders at issue in Docket No. WEVA 2010-558 are AFFIRMED and shall remain as issued.									\$15,597	Assessed penalty of \$15,597 AFFIRMED Parties agree that all remaining Orders are affirmed as issued.
								TOTAL	\$263,643	\$135,675

DOCKET NO. WEVA 2010-559

Citation	Condition Cited	CFR	A	B	S&S	Neg.	No. Pers.	Type	Assessment	Proposed Settlement Rationale for Modification
8023218	Conveyor belts not properly aligned to prevent rubbing.	75.1731(b)	RL	F	Y	M	10	104(a)	\$11,306	Reduce penalty to \$5,087 Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time & did not exist during the preshift examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.

8023219	Accumulation of loose coal, coal fines and coal dust.	75.400	RL	F	Y	M	10	104(a)	\$18,271	<p>Reduce penalty to \$11,057</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time due to a misalignment of the belt. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
8023422	Conveyor belts not properly aligned to prevent rubbing.	75.1731(b)	RL	F	Y	M	10	104(a)	\$11,306	<p>Reduce penalty to \$5,087</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time & did not exist during the preshift examination. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
8023426	Deluge water system did not have appropriate nozzles.	75.1101-3	RL	F	Y	M	10	104(a)	\$13,268	<p>Reduce penalty to \$7,307</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the condition did not significantly contribute to a discreet hazard. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>
8023427	Exam for deluge fire system was inadequate.	75.1107-16(a)	RL	F	Y	M	10	104(a)	\$13,268	<p>Reduce penalty to \$7,307</p> <hr/> <p>Respondent would present evidence at trial which may demonstrate that the condition was not obvious and was the result of independent acts by miners. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.</p>

8023428	Accumulation of loose coal, coal fines and coal dust.	75.400	RL	F	Y	M	10	104(a)	\$21,442	Reduce penalty to \$11,793 Respondent would present evidence at trial which may demonstrate that the condition existed for a short period of time & there was no frictional heat at the time he citation was issued. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.	
8020727	Receptacles on conveyor power center were not properly identified.	75.517	RL	F	Y	M	1	104(a)	\$3,589	Reduce penalty to \$2,153 Respondent would present evidence at trial which may demonstrate that labeling was in place and the operator believed that the labeling was in compliance based on prior MSHA inspections. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.	
8022447	Refuge chamber not equipped with an additional communication system.	75.1600-3(a)(2)	U	F	N	M	10	104(a)	\$8,678	Reduce penalty to \$6,101 Respondent would present evidence which may show that the condition was present during two previous MSHA inspections and was not cited. Based on these mitigating circumstances, the Secretary agrees that a reduction in the penalty is warranted.	
The remaining thirty-eight (38) Citations at issue in Docket No. WEVA 2009-559 are AFFIRMED and shall remain as issued.									\$45,445	Assessed penalty of \$45,445 is AFFIRMED Parties agree that all remaining Citations are affirmed as issued.	
									TOTAL	\$146,573	\$101,337

The proposed penalty amounts, gravity designations and negligence designations shall remain as issued in the following cases:

a) The Secretary's proposed penalty of \$1,156.00 in docket no. WEVA 2009-377 is **AFFIRMED**.

b) The Secretary's proposed penalty of \$16,961.00 in docket no. WEVA 2009-652 is **AFFIRMED**.

c) The Secretary's proposed penalty of \$4,000.00 in docket no. WEVA 2009-892 is **AFFIRMED**.

d) The Secretary's proposed penalty of \$18,682.00 in docket no. WEVA 2009-893 is **AFFIRMED**.

e) The Secretary's proposed penalty of \$38,759.00 in docket no. WEVA 2009-1105 is **AFFIRMED**.

f) The Secretary's proposed penalty of \$27,333.00 in docket no. WEVA 2009-1301 is **AFFIRMED**.

g) The Secretary's proposed penalty of \$65,699.00 in docket no. WEVA 2009-1302 is **AFFIRMED**.

h) The Secretary's proposed penalty of \$10,402.00 in docket no. WEVA 2009-1604 is **AFFIRMED**.

i) The Secretary's proposed penalty of \$12,718.00 in docket no. WEVA 2009-1669 is **AFFIRMED**.

j) The Secretary's proposed penalty of \$2,824.00 in docket no. WEVA 2009-1742 is **AFFIRMED**.

k) The Secretary's proposed penalty of \$17,926.00 in docket no. WEVA 2010-355 is **AFFIRMED**.

1) The Secretary's proposed penalty of \$18,012.00 in docket no. WEVA 2010-677 is **AFFIRMED**.

The agreed upon penalty amounts are consistent with the criteria set forth at 30 CFR Part 100. The proposed penalty amounts are reasonable given the circumstances surrounding the violations.

The criteria set forth at Section 110(i) of the Act have been considered and the penalties are appropriate in light of these criteria and promote the purposes of the Act. The gravity of the violations and the operator's alleged negligence are set forth above. The violations were abated in good faith. Information pertaining to the operator's history of previous violations and size are contained in Exhibit A which was filed by the Secretary along with the petition in this matter. Payment of the proposed penalties will not adversely affect the operator's ability to continue in business.

Each party agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees and costs which may be available under the Equal Access to Justice Act, as amended.

Within 30 days of the date of the judge's order, Respondent shall send a check in the amount of **\$979,230.00**, made payable to "U.S. Department of Labor/MSHA", to P.O. Box 790390, St. Louis, MO 63179-0390.