

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, D.C. 20004

September 30, 2014

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 2012-952
Petitioner, : A.C. No. 15-08079-284662-01
 :
v. : Docket No. KENT 2012-953
 : A.C. No. 15-08079-284662-02
EXCEL MINING, LLC, :
Respondent. : Mine: Mine No. 3

DECISION

Appearances: J. Malia Lawson, Esq., U.S. Department of Labor, Office of the Solicitor,
Nashville, Tennessee, on behalf of the Secretary of Labor;

Gary D. McCollum, Esq., Excel Mining, LLC, Lexington, Kentucky, on behalf
of Respondent.

Before: Judge Paez

This case is before me upon the petitions for the assessment of civil penalty filed by the Secretary of Labor (“Secretary”) under section 105 of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815. These matters were called for hearing on September 11, 2014, in Pikeville, Kentucky. For an hour beginning at the scheduled hearing time, the parties were permitted to attempt an amicable resolution of these dockets, given that counsel, witnesses, and the principals were all in attendance. At the conclusion of this period, I went on the record whereby the parties stated that they had resolved their differences. (Tr. 6–7.) Counsel for the Secretary specified the terms of the settlement, which I outline below, and counsel for Excel Mining, LLC (“Excel” or “Respondent”) concurred. (Tr. 7–8.) The parties read the terms of the settlement into the record and provided the rationale for the settlement agreement. (Tr. 7-10.)

The Secretary’s originally proposed assessment for both dockets was \$12,143.00, and the parties’ proposed settlement amount is \$10,500.00. The proposed settlement is as follows:

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| <u>Citation/ Order No.</u> | <u>Date</u> | <u>30 C.F.R.</u> | <u>Assessment</u> | <u>Settlement</u> |
|--------------------------------|-------------|------------------|--------------------|--------------------|
| 8265645 | 01/10/2012 | 48.7(a)(3) | \$ 3,143.00 | \$ 2,500.00 |
| 8268748 | 01/10/2012 | 50.10(b) | <u>\$ 5,000.00</u> | <u>\$ 5,000.00</u> |
| | | Total: | \$ 8,143.00 | \$ 7,500.00 |

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| <u>Citation/ Order No.</u> | <u>Date</u> | <u>30 C.F.R.</u> | <u>Assessment</u> | <u>Settlement</u> |
|--------------------------------|-------------|------------------|-------------------|-------------------|
| 8268749 | 01/10/2012 | 50.12 | \$ 4,000.00 | \$ 3,000.00 |

Cumulative Totals: \$12,143.00 \$10,500.00

In support of the proposed settlement, the Secretary has submitted information pertaining to the six statutory civil penalty criteria found in section 110(i) of the Mine Act, 30 U.S.C. § 820(i), including information regarding Respondent’s size, ability to continue in business, and history of previous violations. In addition, the Secretary and Respondent have stated reasons on the record fully warranting the agreed upon reduction in the proposed penalties.

After review and consideration of the pleadings, arguments, and submissions in support of the settlement motion, I find that the proposed settlement is reasonable and in the public interest. Pursuant to 29 C.F.R. § 2700.31, the motion is **GRANTED**, and the settlement is **APPROVED**.

ORDER

Respondent is **ORDERED** to **PAY** a civil penalty of \$10,500.00 within 30 days of this Order.¹

Additionally, within the same 30 days, the Secretary is **ORDERED** to **MODIFY** the following:

| Citation/Order No. | Standard | Gravity | | | | Negligence | Type of Action |
|----------------------|----------|--------------------|----------|-----|----------------------------|------------|----------------------|
| | | Likelihood | Severity | S&S | Number of Persons Affected | | |
| KENT 2012-952 | | | | | | | |
| 8265645 | N/A | To “Highly Likely” | N/A | N/A | N/A | N/A | N/A |
| KENT 2012-953 | | | | | | | |
| 8268749 | N/A | N/A | N/A | N/A | N/A | N/A | To “104(a) Citation” |


 Alan G. Paez
 Administrative Law Judge

¹ Payments should be sent to: U.S. Department of Labor, MSHA, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390. Please include docket and A.C. numbers.

Distribution:

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