

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, NW, Suite 9500  
Washington, D.C. 20001

March 17, 2009

OHIO COUNTY COAL COMPANY, Contestant	:	CONTEST PROCEEDINGS
	:	
v.	:	Docket No. KENT 2006-308-R Order No. 6689096; 05/09/2006
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	:	Docket No. KENT 2006-309-R Order No. 6689097; 05/09/2006
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Respondent	:	Freedom Mine Mine ID 15-17587
	:	
	:	CIVIL PENALTY PROCEEDINGS
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION, (MSHA), Petitioner	:	Docket No. KENT 2006-369 A.C. No. 15-17587-88177
	:	
	:	Docket No. KENT 2007-46 A.C. No. 15-17587-98358-01
	:	
	:	Docket No. KENT 2007-49 A.C. No. 15-17587-98358-02
v.	:	
	:	
	:	Docket No. KENT 2007-77 A.C. No. 15-17587-100975
	:	
	:	Docket No. KENT 2007-82 A.C. No. 15-17587-100975
	:	
OHIO COUNTY COAL COMPANY, Respondent	:	Freedom Mine

**DECISION**

Appearances: Mary Sue Taylor, Esq., U.S. Department of Labor, Nashville, Tennessee,  
on behalf of the Secretary  
R. Henry Moore, Esq., Jackson Kelly, PLLC, Pittsburgh, Pennsylvania,  
on behalf of the Company

Before: Judge Barbour

These consolidated cases concern contest and civil penalty proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, *et seq.* In the contest proceedings Ohio County Coal Company (Ohio County or the company) challenges the validity of a citation and order issued at its Freedom Mine, an underground bituminous coal mine located in Henderson County, Kentucky. In the civil penalty proceedings the Secretary of Labor, on behalf of her Mine Safety and Health Administration, seeks the assessment of various proposed civil penalties for 79 alleged violations.

The matters were the subject of extensive negotiations, and the parties were able to settle many, but not all, of the issues dividing them. When it became apparent the parties could not settle their remaining differences, the cases were scheduled to be heard in Washington, D.C. The trial was to begin at 8:30 a.m., on August 25, 2008, but shortly before the appointed time, I met with counsels to explore whether further negotiations were warranted. Counsels consulted their clients and advised me they wished to postpone the start of the hearing. The Commission made its offices available, and at approximately 10:20 a.m. counsels advised me they agreed on a framework to settle the remaining issues.

The hearing was convened so that counsels could state the outlines of the proposed settlement on the record. As counsel for the company described the proposed settlement, it involved the Secretary agreeing to delete inspectors' findings that several of the alleged violations were of a significant and substantial nature (S&S) and the company agreeing to accept the S&S findings on other of the citations. Additionally, as counsel for Ohio County explained, the parties agreed:

A training class will be conducted at the mine by mine personnel that may be monitored by MSHA [and] that will address the importance of compliance with [30 C.F.R. §] 75.400, [(the mandatory safety standard prohibiting accumulations of loose coal, coal dust and other combustible materials)] . . . . In addition, the mine's clean-up plan will be revised to spell out a written procedure for per-operational checks with respect to three types of equipment . . . the diesel man trips, the roof bol[t]ers and the ram cars. . . . [A]s part of the program there will be training given on pre-operational checks and there will be a pre-operational checklist developed that will address the issue of keeping the types of [referenced] equipment . . . free from hazardous accumulations of coal and other combustible materials.

[The] plan [also] will include a card that will be placed on equipment to indicate the scope of . . .

[the pre-operational] checks. . . . [The] card will also include a direction that [when] a deficiency is noted in a pre-operational check, it shall be reported to a foreman. In addition, there will be a provision with respect periodic monitoring [to ensure] . . . [the] checks are being done.

Tr. 6-7.

Three months prior to the hearing, counsels had submitted a motion requesting approval of a settlement of issues related to several of the alleged violations.<sup>1</sup> At the hearing, counsels stated they hoped to submit a motion for the approval of all other issues by September 9, 2008. Tr. 8. However, as counsel for Ohio County noted, “the devil is in the details”, an observation that proved prescient.

Although on September 8, counsels submitted another motion to approve a partial settlement.<sup>2</sup> Only in mid-February 2009, and after continuing discussions and the exchange of several draft settlement motions, did counsels finally agree concerning all of the remaining issues. A joint motion to approve the last parts of the settlement was filed on February 19, 2009.<sup>3</sup>

The settlement, as stated in the parties’ motion as amended, is as follows:

**KENT 2006-369**

<b><u>Citation/ Order No.</u></b>	<b><u>Date</u></b>	<b><u>30 C.F.R.</u></b>	<b><u>Assessment</u></b>	<b><u>Settlement</u></b>
6689120 <sup>[4]</sup>	3/1/06	75.400	\$614	\$614
6689123	3/1/06	75.400	\$614	\$614
6689129	3/6/06	75.400	\$614	\$614
6689145	5/15/06	75.1106-3(a)(3)	\$963	\$500

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<sup>1</sup>On August 7, 2008, I issued a decision approving the partial settlement of the cases.

<sup>2</sup>On September 22, 2008, I issued another partial settlement decision based on the motion.

<sup>3</sup>Two corrections to the February 19 motion were subsequently filed by e-mail. A printout of the e-mail is part of the record. See e-mail, *Errors in KENT 2007-46* (March 6, 2009).

<sup>4</sup>Joint Stipulations and Motion for Approval of Pretrial Settlement (February 19, 2009). In addition to Citation No. 6689120, the Joint Stipulations and Motion includes Citation Nos. 6689123, 6689129 and 6689145.

**KENT 2007-46**

<b><u>Citation/ Order No.</u></b>	<b><u>Date</u></b>	<b><u>30 C.F.R.</u></b>	<b><u>Assessment</u></b>	<b><u>Settlement</u></b>
6689109 <sup>[5]</sup>	2/24/06	75.362(b)	\$4,500	\$3,000
6689468 <sup>[6]</sup>	5/16/06	75.400	\$963	\$963
6689430	5/22/06	75.503	\$440	\$440
6689431	5/22/06	75.400	\$440	\$440
6689432	5/22/06	75.400	\$440	\$440
6689433	5/22/06	75.400	\$440	\$440
6689472	5/23/06	75.202(a)	\$838	\$376
6689473	5/22/06	75.400	\$963	\$963
6689451	6/1/06	75.400	\$440	\$440

**KENT 2007-49**

<b><u>Citation/ Order No.</u></b>	<b><u>Date</u></b>	<b><u>30 C.F.R.</u></b>	<b><u>Assessment</u></b>	<b><u>Settlement</u></b>
6689460 <sup>[7]</sup>	6/2/06	75.400	\$440	\$440
6689542	6/2/06	75.400	\$440	\$440

**KENT 2007-82**

<b><u>Citation/ Order No.</u></b>	<b><u>Date</u></b>	<b><u>30 C.F.R.</u></b>	<b><u>Assessment</u></b>	<b><u>Settlement</u></b>
6689096 <sup>[8]</sup>	5/9/06	75.1107-16	\$3,700	\$3,700

In support of the proposed settlement of the allegations relating to the alleged violations, Section 110(I) of the Act (30 U.S.C. § 820(i), including information regarding Ohio County's size, ability to continue in business and history of previous violations.

**KENT 2006-308-R**

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<sup>5</sup>E-mail, *Errors in KENT 2007-46* (March 6, 2007). In addition to Citation No. 6689109, the e-mail includes Citation No. 6689472.

<sup>6</sup>Joint Stipulations and Motion for Approval of Pretrial Settlement (February 19, 2009). In addition to Citation No. 668468, the Joint Motion includes Citations No. 6689430, 6689431, 6689432, 6689433, 6689473 and 6689451.

<sup>7</sup>Joint Stipulations and Motion for Approval of Pretrial Settlement (February 19, 2009). In addition to Citation No. 6689460, the Joint Motion includes Citation No. 6689542.

<sup>8</sup>Joint Stipulations and Motion for Approval of Pretrial Settlement (February 18, 2009).

**(104(d)(1) Citation 6689096, 5/9/06, 30 C.F.R. § 75.1107-16)**

**KENT 2006-309-R**

**(104(d)(1) Order 6689097, 5/9/06, 30 C.F.R. § 75.606)**

Resolution of the penalty issues with regard to Citation No. 6689096 (Docket No. KENT 2007-82) and Order No. 6689097 (Docket No. KENT 2007-82) has resolved the issues raised in contest proceedings KENT 2006-308-R and KENT 2006-309-R, and the parties agree the contests may be dismissed.<sup>9</sup>

**OTHER AGREEMENTS**

In addition to the Secretary agreeing to accept payment as specified for the alleged violations and Ohio County agreeing to pay, the parties further agreed regarding the teaching of a class relating to cleaning combustible materials on mobile equipment, the external operating temperatures of specific types of mobile equipment and the implementation of a list for the pre-operational checks of such equipment. Their agreement states:

- a. Within 30 days of the approval of this settlement . . . Ohio County shall conduct on all three shifts a class lasting a minimum of 30 minutes that shall address the importance of the cleaning of combustible materials from mobile mining equipment and the potential hazards to accumulations of combustible materials on mining equipment. MSHA may monitor such class and Ohio County will provide two day notice to MSHA of the conduct of such classes.
- b. MSHA agrees that the normal operating external operating temperatures of the components of roofbolting machines, including but not limited to motors, valve banks, etc., is 168° F or less.
- c. MSHA agrees that the normal operating external operating temperatures of the components of ramcars, including, but not limited to, motors, hydraulic tanks, etc., is 168° F or less.
- d. MSHA agrees that the normal operating external operating temperatures of the components of diesel

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<sup>9</sup>The settlement relating to Order No. 6689097 was set forth in the parties' September 8, 2008, motion and was approved in the September 22 partial decision.

mantrips, including motors, is 195° F or less. The external surface temperature of the exhaust is greater than 195° F but less than 302°F, MSHA's limit on such temperatures.

e. Ohio county has proposed revisions to the cleanup plan adopted under 30 C.F.R. § 75.400-2 . . . . Such revised plan shall include the requirement that a written check list for the pre-operational checks of roofbolters, diesel mantrips and ramcars, be developed and affixed to the mobile equipment specified herein. Such checklist shall include requirements that the equipment operator perform a pre-operational check of the exterior surfaces of such equipment for hazardous accumulations of combustibles[,] including coal, coal fines, float coal dust, hydraulic oil, grease and diesel fuel. Such checklist shall be provided on roofbolters, ramcars and diesel mantrips. Upon notification of the absence of such a list on equipment, it shall be replaced by the next shift. Such pre-operational checklist shall include a requirement that the operator report to his supervisor any deficiency in the equipment so that appropriate action may be taken if necessary.

Joint Stipulations and Motion for Approval of Pretrial Settlement (February 19, 2009) at 5-

6.

After consideration of the settlement motions, I find the proposed settlement is reasonable and in the public interest. The motion **IS GRANTED** and the settlement **IS APPROVED**.

### **ORDER**

Ohio County **IS ORDERED** to pay a total civil penalty of \$14,424 in satisfaction of the violations in question. Payment is to be made to MSHA within 30 days of the date of this decision. In addition, within the same time period Ohio County **IS ORDERED** to implement the agreements

as specified in the “Other Agreements” section of this decision and as stated in the February 19, 2009 motion. Upon receipt of full payment and implementation of the specified agreements, all of the captioned proceedings **ARE DISMISSED**.

David F. Barbour  
Administrative Law Judge

Distribution: (Certified Mail)

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