

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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June 23, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 94-74
Petitioner	:	A. C. No. 01-01401-03987
v.	:	
	:	Docket No. SE 94-84
JIM WALTER RESOURCES, INC.,	:	A. C. No. 01-01401-03988
Respondent	:	
	:	Docket No. SE 94-115
	:	A. C. No. 01-01401-03993
	:	
	:	No. 7 Mine

## **DECISION ON REMAND** **AND** **ORDER APPROVING SETTLEMENT**

Before: Judge Barbour

On March 17, 1997, the Commission reversed in part the decision of Commission Administrative Law Judge Arthur Amchan (*Jim Walter Resources, Inc.*, 16 FMSHRC 2477 (December 1994)). The Commission held that the judge applied an improper test when he determined that two violations of 30 C.F.R. ' 75.1725 were not the result of the company's unwarrantable failure to comply with the standard (Docket Nos. SE 94-74 and 94-115). It also held that he erroneously concluded two violations of 30 C.F.R. ' 75.400 were not unwarrantable (Docket Nos. SE 94-74 and 94-84). Accordingly, the Commission remanded the matters for reconsideration of whether the violations of section 75.1725 were unwarrantable and, if necessary, for reassessment of the applicable civil penalties. The Commission also ordered reassessment of the penalties for the violations of section 75.400 (*Jim Walter Resources, Inc.*, 19 FMSHRC 480 (March 1997)).

In light of the Commission's decision, the parties have settled the matters. They have filed a joint motion pursuant to Commission Rule 31 (29 C.F.R. ' 2700.31) seeking approval of the settlement. The proposed settlement is as follows:

**SE 94-74**

<u>Citation/ Order No.</u>	<u>Date</u>	<u>30 C.F.R. '</u>	<u>Assessment Settlement</u>	
3015093	08/17/93	75.1725(a)	\$ 7,000	\$ 4,250

Order No. 3015093 concerns a conveyor belt that was out of alignment, running side to side, and cutting into the metal supporting structure of the conveyor. Jim Walter concedes it did not maintain the belt in safe operating condition or immediately remove the belt from service, as required by the cited standard (16 FMSHRC at 2478). The parties agree that at the time the violation was cited there was no indication a belt fire was highly likely and they agree to modify the inspector's finding of gravity from ~~A~~highly likely@to ~~A~~reasonably likely@. Further, the Secretary concedes she cannot establish the inspector's finding that 22 miners were affected by the violation. Therefore she agrees to modify the finding to ~~A~~four to five@miners.

<u>Citation/ Order No.</u>	<u>Date</u>	<u>30 C.F.R. '</u>	<u>Assessment Settlement</u>	
3015095	08/17/94	75.400	\$ 5,000	\$ 3,750

Order No. 3015095 concerns accumulations of loose coal and coal dust at a belt feeder. The belt feeder was improperly positioned so that some of the coal from the belt dumped onto the floor rather than into waiting ram cars. The judge found the Respondent violated the standard, which requires coal dust and loose coal to be cleaned up and not to be permitted to accumulate in active workings (16 FMSHRC at 2483). The parties agree that although the inspector found 10 persons were affected by the violation, a more reasonable number is 4 and the Secretary agrees to modify the order accordingly. They also note the feeder is equipped with water sprays, fire fighting equipment was stored at or close to the feeder, and all of the ram cars are equipped with fire extinguishers. In addition, a miner usually is stationed at the feeder to monitor problems. The Secretary has no evidence of fires occurring at belt feeders in the mine.

**SE 94-84**

<u>Citation/ Order No.</u>	<u>Date</u>	<u>30 C.F.R. '</u>	<u>Assessment Settlement</u>	
3015087	07/29/93	75.1725(a)	\$ 7,000	\$ 4,250

Order No. 3015087 concerns the same conveyor belt involved in Order No. 3015093. As in the latter order, the belt was improperly aligned and was rubbing against the metal supporting structure of the conveyor. In addition, several rollers were out of place and the belt was not supported adequately. The judge found the Respondent violated the standard (16 FMSHRC at 2484). The parties agree that for reasons identical to those set forth for Order No. 3015093, the inspector's gravity finding will be modified from **highly likely** to **reasonably likely** and his finding as to the number of persons affected by the violation will be modified from **25** to **4 to 5**.

**SE 94-115**

<u>Citation/ Order No.</u>	<u>Date</u>	<u>30 C.F.R. '</u>	<u>Assessment Settlement</u>	
3182957	08-16-93	75.400	\$ 4,900	\$ 3,675

Order No. 3182957 concerns an accumulation of float coal dust under a conveyor belt. The belt was rubbing in the dust. The judge found the Respondent violated the standard, which requires the dust to be cleaned up and not to be permitted to accumulate (16 FMSHRC at 2486). The parties agree that although the inspector found 10 persons were affected by the violation, a more reasonable number is 4 to 5. The parties agree the inspector's finding regarding the number of persons should be modified from **10** to **4 to 5**. In addition, the Secretary has no evidence of reportable belt fires at the mine.

<u>Citation/ Order No.</u>	<u>Date</u>	<u>30 C.F.R. '</u>	<u>Assessment Settlement</u>	
3183157	09-02-93	75.400	\$ 7,500	\$ 5,625

Order No. 3183157 concerns a belt tailpiece that was turning in an accumulation of coal dust. The judge found the Respondent violated the standard (16 FMSHRC at 2487). The parties agree that although the inspector found 22 persons were affected by the violation, a more reasonable number is 4 to 5. The parties agree the inspector's finding regarding the number of persons affected should be modified from **22** to **4 or 5**. In addition, the Secretary has no evidence of reportable fires occurring on belts in the mine.

In further support of the proposed settlement, the parties have submitted information pertaining to the remaining civil penalty criteria as found and applied by Judge Amchan.

After review and consideration of the pleadings, arguments and submissions in support of the settlement motion, I find 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 total civil penalty of \$21,550 in satisfaction of the violations in question. Payment is to be made to MSHA within 30 days of the date of this proceeding. In addition, the Secretary **IS ORDERED** to modify the orders, as set forth above, within the same 30 days. Upon receipt of full payment and modification of the orders, these proceedings are **DISMISSED**.

David F. Barbour  
Administrative Law Judge

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