

CASES CURRENTLY ON REVIEW BEFORE THE COMMISSION

(As of May 10, 2013)

No.	Case Name Docket No.	Date When Review was Granted	Description of the Case
1	Black Castle Mining Co. WEVA 2006-891-R, et al.	2/24/10	Whether the operator and the mine superintendent violated the regulatory requirement to conduct adequate pre-shift and on-shift examinations.
2	Prairie State Generating Co. LAKE 2009-711-R, et al.	6/30/10	Whether the ALJ properly rejected the operator's challenges to MSHA's actions with regard to roof control and ventilation plans at the mine.
3	Spartan Mining Co. WEVA 2009-403	7/29/10	Whether the ALJ, in concluding that violations of escapeway standards were S&S, properly presumed that an emergency would occur.
4	Consolidation Coal Co. WEVA 2009-371	9/1/10	Whether the ALJ properly concluded that various violations were S&S violations and that one violation was due to an unwarrantable failure to comply.
5	Big Ridge, Inc. LAKE 2009-377, et al.	10/5/10	Whether the ALJ properly concluded that various violations were S&S violations and/or due to an unwarrantable failure to comply.
6	Wolf Run Mining Co. WEVA 2007-600 et al.	10/20/10	Whether the ALJ erred in his negligence and unwarrantable failure analysis.

7	Sequoia Energy, LLC KENT 2008-1059	10/28/10	Whether the ALJ erred in reducing the amounts of certain civil penalties.
8	Mach Mining, LLC LAKE 2009-324-R	11/8/10	Whether the ALJ erred in concluding that the partial blocking of an escapeway did not constitute an “unwarrantable failure.”
9	Twentymile Coal Co. WEST 2008-788-R et al.	11/24/10	Whether the ALJ erred in concluding that violations involving accumulations of coal dust and an inadequate pre-shift exam were S & S and that one violation was due to an “unwarrantable failure.”
10	Performance Coal Co.. WEST 2008-1825	12/28/10	Whether the ALJ erred by significantly reducing a proposed penalty without explaining or acknowledging the reduction.
11	Knox Creek Coal Co. VA 2010-81-R, et al.	2/4/11	Whether the ALJ erred in concluding that certain violations were not “significant and substantial” because of assumptions that were made concerning abatement.
12	Jim Walter Resources, Inc. SE 2008-881 et al.	3/10/11	Whether the ALJ substantially reduced the amount of a civil penalty without providing an adequate explanation.
13	Emerald Coal Resources PENN 2009-697	3/29/11	Whether the ALJ erred in concluding that impermissible accumulations of coal existed and that the violation was S&S and unwarrantable.

14	Big Ridge, Inc. LAKE 2009-490, et al.	4/9/11	Whether a violation of the lifeline requirement was S&S.
15	Oak Grove Resources SE 2009-261-R	5/6/11	Whether the ALJ erred in finding that a safeguard notice was invalid for lack of specificity.
16	Tilden Mining Co. LAKE 2008-503-M	5/25/11	Whether a standard requiring periodic resistance testing applies to extension cords and power cords.
17	Black Beauty Coal Co. LAKE 2009-565	6/7/11	Whether a violation of a lifeline requirement was S&S.
18	Wake Stone Corp. SE 2010-95-M	6/9/11	Whether the ALJ erred in concluding that the service horns on mobile equipment were maintained in functional condition.
19	Wolf Run Mining Co. WEVA 2006-853 et al	6/10/11	Whether the ALJ erred in concluding that a violation of a particular lightning arrestor standard was not S&S.
20	S & S Dredging SE 2007-447	6/24/11	Whether the ALJ erred by ruling that a violation was not S&S because it was not reasonably likely to result in an injury that would require hospitalization or surgery.

21	Brody Mining, LLC WEVA 2009-1000, et al.	6/30/11	Whether the ALJ erred in vacating S&S and unwarrantable failure designations and reducing the penalty amounts.
22	Black Beauty Coal Co. LAKE 2009-570	7/29/11	Whether the hazard identified in a safeguard must be specifically described.
23	Revelation Energy, LLC KENT 2011-71-R	8/3/11	Whether the ALJ erred in ruling that a partial flyrock event was an “accident” under section 103(k) and MSHA’s regulations.
24	Lafarge North America CENT 2010-4-M	8/15/11	Whether the ALJ erred in concluding that the operator did not have adequate notice of the Secretary’s interpretation of a standard requiring that defective equipment be taken out of service until defects are corrected.
25	Twentymile Coal Co. WEST 2009-241, et al..	9/22/11	Whether the ALJ erred in ruling that the standard governing communication cables had been violated even though the manufacturer had provided additional insulation.
26	Big Ridge, Inc. LAKE 2008-436, et al.	10/17/11	Whether the hazard identified in a safeguard notice was sufficiently described.
27	Connolly-Pacific Co. WEST 2011-1064-RM	11/2/11	Whether the ALJ erred in applying certain broadly worded standards to the operator’s high wall and whether the ALJ findings are supported by substantial evidence.

28	McCoy Elkhorn Corp. and Robinson KENT 2008-986 et al.	11/15/11	Whether the ALJ erred in finding high negligence, unwarrantable failure, and individual liability with regard to a violation for coal accumulations.
29	Mach Mining, LLC LAKE 2009-427	11/10/11 11/18/11	Whether the ALJ erred in ruling that an emergency escapeway violation was not S&S and also in ruling that it was the result of high negligence.
30	Gray v. North Fork Coal Corp. KENT 2010-430-D	11/28/11	Whether the ALJ erred in ruling that no discrimination had occurred.
31	The American Coal Co. LAKE 2007-171 et al.	12/2/11	Whether the hazards identified in safeguard notices were sufficiently described.
32	The American Coal Co. LAKE 2008-038	12/19/11	Whether the hazards identified in safeguard notices were sufficiently described.
33	Jim Walter Resources SE 2011-407-R	1/30/12	Whether the ALJ erred by upholding an imminent danger order issued because of high methane levels.
34	Excel Mining, LLC KENT 2009-1368	2/2/12	Whether the ALJ erred in concluding that violations of equipment permissibility requirements were S&S and due to unwarrantable failures.

35	Jim Walter Resources SE 2011-477-R, et al.	2/9/12	Whether the ALJ erred by upholding the issuance of a section 103(j) order and a section 103(k) order.
36	Newmont USA Limited WEST 2010-652-RM	2/13/12	Whether the ALJ erred by ruling that a non-working area where an auxiliary fan is turned off is an “unventilated area” that must be sealed or barricaded. Whether the ALJ erred in determining that the violation was not an unwarrantable failure. (Cross-petitions filed by the operator and the Secretary).
37	State of Alaska WEST 2008-1490-M	2/17/12	Whether the ALJ erred in concluding that MSHA did not have jurisdiction over certain front-end loaders because the process in question does not constitute “milling.”
38	Black Beauty Coal Co. LAKE 2008-378-R, et al.	3/21/12	On cross petitions, (1) whether the ALJ erred in concluding that the resumption of mining in an area constituted a violation even that there was not a reportable accident and (2) whether an on-shift examination of an area was required because undisputed evidence showed that coal was produced during the shift.
39	Armstrong Coal Co. KENT 2010-1156	4/24/12	Whether the judge erred by approving a proposed settlement whether the Secretary allegedly failed to comply with a show cause order.
40	Big Ridge, Inc. LAKE 2011-699-R, et al.	5/4/12	Whether the judge erred by affirming a section 103(j) order where no rescue and recovery work was allegedly necessary.

41	Hopkins County Coal KENT 2009-820-R, et al.	5/10/12	Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.
42	Jim Walter Resources, Inc. SE 2007-203-R, et al.	7/20/12	Whether the judge erred in applying the “reasonable prudent person” test in determining whether a roof fall violation occurred.
43	Signal Peak Energy, LLC WEST 2010-1130	7/20/12	Whether the judge erred in ruling that a particular accident was immediately reportable in assessing a civil penalty that allegedly exceeded the statutory maximum.
44	West Alabama Sand & Gravel SE 2009-870-M	8/22/12	Whether the judge erred by converting an opposition to a motion for summary decision into a cross-motion for summary decision without giving the other party an opportunity to contest disputed facts.
45	Dawes Rigging & Crane Rental LAKE 2011-206-M	8/30/12	Whether the judge erred in finding a violation in assembling a crane where the assembly crew allegedly followed the manufacturer’s procedures and industry practice in assembling the crane.
46	Mill Branch Coal Corp. VA 2012-435-R et al.	9/13/12	On cross-petitions for review, whether the judge erred in concluding that the failure to conduct adequate weekly examinations was not an unwarrantable failure and whether the judge erred in affirming an imminent danger order with regard to evacuating the mine through a primary escapeway.

47	Twentymile Coal Co. WEST 2009-1323 et al.	9/13/12	On cross-petition for review, whether the judge erred in affirming a citation for failing to provide additional insulation for a communication circuit and whether the judge erred in concluding that a citation for failing to conduct and adequate on-shift examination was not supported by substantial evidence.
48	DQ Fire and Explosion Consultants WEVA 2011-602	10/5/12	Whether the judge erred in holding that the Secretary provided adequate notice of her interpretation of the training regulation at issue.
49	DQ Fire and Explosion Consultants WEVA 2011-952-R et al.	10/5/12	Whether the judge erred in holding that the violation was the result of high negligence.
50	Bledsoe Coal Corp. KENT 2011-835 et al.	11/9/12	On cross-petitions for review, whether the judge erred in upholding the validity of a pattern of violations notice and whether the judge erred in deleting three findings that violations were “significant and substantial.”
51	ICG Hazard, LLC KENT 2009-951 et al.	11/19/12	Whether the judge erred by assessing a penalty that exceeded the statutory maximum and also by not making an unwarrantable failure finding.
52	Solar Sources, Inc. LAKE 2009-373 et al.	12/7/12	Whether the Secretary correctly interpreted a standard addressing the use of fire extinguishers on mobile equipment.
53	Small Mine Development WEST 2011-1351-M, et al.	1/18/13	Whether the ALJ erred in concluding that the operator was required to provide a method of refuge while exploring or developing an ore body.

54	Hidden Splendor Resources, Inc. WEST 2009-208, et al.	1/28/13	Whether the ALJ erred in not assessing the statutory minimum penalty and by failing to provide sufficient explanation in assessing other penalties.
55	Sierra Rock Products, Inc. WEST 2010-1390-RM, et al.	2/13/13	Whether the ALJ erred in vacating an unwarrantable designation and reducing negligence from reckless to moderate.
56	Beverly Materials, LLC LAKE 2011-957-M	2/20/13	Whether the ALJ erred in concluding that an intermittently functioning horn on mobile equipment satisfied the requirement that it be maintained in functional condition.
57	Premier Elkhorn Coal Co. KENT 2011-827	2/27/13	Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.
58	Mize Granite Quarries, Inc. SE 2009-401, et al.	3/11/13	Whether the ALJ erred by not adequately explaining the basis for the penalty amounts assessed.
59	Wade Sand & Gravel Co. SE 2013-120-M	5/08/13	Whether the Secretary's interpretation of his Part 100 regulations with regard to past violations is erroneous.

COMMISSION DECISIONS ON APPEAL

(As of May 10, 2013)

<u>No.</u>	<u>Appellate Case Name and Docket No.</u>	<u>Commission Decision</u>	<u>Status</u>
1	Lone Mountain Processing, Inc. v. Sec'y D.C. Cir. No. 11-1431	Lone Mountain Processing, Inc., 33 FMSHRC 2357 (Oct. 2011) (Nos. KENT 2011-1153, et al.) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed on 11/7/11 <u>Decision issued 3/19/13; awaiting mandate</u>
2	Cumberland Coal Resources, LP v. Sec'y D.C. Cir. No. 11-1464	Cumberland Coal Resources, LP, 33 FMSHRC 2357 (Oct. 2011) (No. LAKE 2008-189) (whether ALJ erred in ruling that violation of emergency lifeline standard was not S&S)	Petition for review filed 11/23/11 Oral argument held 2/14/13; awaiting decision
3	Excel Mining, LLC v. Sec'y D.C. Cir. No. 12-1123	Excel Mining, LLC, 34 FMSHRC 99 (Jan. 2012) (No. KENT 2008-1481-R) (whether ALJ erred in finding that violation was unwarrantable)	Petition for review filed 3/7/12 <u>Decision issued 3/15/13; mandate issued 5/8/13</u>
4	Pine Ridge Coal Co. v. Sec'y D.C. Cir. No. 12-1164	Pine Ridge Coal Co., 34 FMSHRC 291 (Jan. 2012) (whether ALJ erred in finding that violation was S&S and unwarrantable)	Petition for review filed 4/5/12 Settlement motion pending

5	Oak Grove Resources, LLC v. Sec'y D.C. Cir. No. 12-1223	Oak Grove Resources, LLC, 34 FMSHRC 594 (May 2012) (whether ALJ erred in affirming an order for an S&S and unwarrantable violation of weekly examination requirement)	Petition for review filed 5/16/12 <u>Decision issued 3/29/13; awaiting mandate</u>
6	Northshore Mining Co. v. Sec'y 8th Cir. No. 12-2249	Northshore Mining Co., 34 FMSHRC 663 (April 2012) (whether ALJ erred in finding S&S violation of lockout regulation)	Petition for review filed 5/25/12 <u>Decision issued 3/8/13; mandate issued 4/30/13</u>
7	Big Ridge, Inc. v. FMSHRC 7th Cir. No. 12-2316	Big Ridge, Inc., 34 FMSHRC 1003 (May 2012) (whether Commission erred in upholding Secretary's authority to conduct Part 50 audit)	Petition for review filed 6/4/12 <u>Decision issued 4/26/13; awaiting mandate</u>
8	Bickett v. Sec'y 7th Cir. No. 12-2460	Big Ridge, Inc., 34 FMSHRC 1003 (May 2012) (whether Commission erred in upholding Secretary's authority to conduct Part 50 audit) (petition by miners)	Petition for review filed 6/20/12 (consolidation with 7th Cir. No. 12-2316) <u>Decision issued 4/26/13; awaiting mandate</u>
9	Cumberland River Coal Co. v. Sec'y obo Howard 6th Cir. No. 12-3918	Sec'y obo Howard v. Cumberland Coal Co., 34 FMSHRC 1396 (June 2012) (whether ALJ erred in order reinstating miner as discrimination remedy)	Petition for review filed 7/26/12 <u>Decision issued 4/4/13; awaiting mandate</u>
10	Metz v. FMSHRC 3rd Cir. No. 12-3507	Metz v. Carmeuse Lime, Inc., 34 FMSHRC 1820 (Aug. 2012) (whether Commission erred in affirming finding of no discrimination)	Petition for review filed 9/7/12 Briefing complete; oral argument scheduled for 5/30/13

11	Mach Mining, LLC v. FMSHRC 7 th Cir. No. 12-3598	Mach Mining, LLC, 34 FMSHRC 1784 (Aug. 2012) (whether the Commission erred in concluding that MSHA's termination of an order was not an approval of the operator's proposed ventilation plan)	Petition for review filed 11/14/12 Oral argument held 4/15/13; awaiting decision
12	Mach Mining, LLC v. FMSHRC D.C. Cir. No. 12-1466	Mach Mining, LLC, 34 FMSHRC 2449 (Aug. 2012) (whether the Commission erred in concluding that the operator had violated the requirement to have an approved ventilation plan)	Petition for review filed 11/27/12 Motion to settle pending
13	Shamokin Filler Co. v. FMSHRC 3 rd Cir. No. 12- 4457	Shamokin Filler Co., 34 FMSHRC 1897 (Aug. 2012) (whether the Commission erred in finding jurisdiction and in upholding the judge's evidentiary rulings)	Petition for review filed 12/10/12 Secretary's brief filed 5/1/13 Petitioner's reply brief due 6/6/13
14	Hopkins County Coal v. FMSHRC 6 th Cir. No. 13-3322	Hopkins County Coal, 35 FMSHRC __ (Jan. 2013) (whether ALJ erred in affirming three violations resulting from a ventilation plan approval dispute)	Petition for review filed 3/19/13 Petitioner's brief filed 5/1/13 Secretary's brief due 5/31/13
15	Dickenson-Russell Coal Co. v. FMSHRC 4 th Cir. No. 13-1374	Dickenson-Russell Coal Co., 35 FMSHRC __ (Jan. 2013) (whether ALJ erred in affirming reporting requirement violation)	Petition for review filed 3/27/13 Petitioner's brief filed 4/30/13 Secretary's brief due 5/30/13

16	Black Beauty Coal Co. v. FMSHRC 7th Cir. No. 13-1659	Black Beauty Coal Co., 34 FMSHRC 1733 (Aug. 2012) (whether the Commission and ALJ erred in finding an S&S and unwarrantable violation for the lack of berms along elevated bench)	Petition for review filed 3/27/13 Briefing schedule suspended
17	American Coal Co. v. FMSHRC D.C. Cir. No. 13-1089	American Coal Co., 35 FMSHRC __ (Feb. 2013), whether the Commission erred in remanding case to ALJ to apply Secretary's interpretation of term "mine fire."	Petition for review filed 3/29/13 Awaiting decision on Secretary's motion to dismiss
