

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9900 / FAX: 202-434-9949

July 7, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

v.

NUFAC MINING COMPANY, INC.,  
Respondent

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2023-0149  
A.C. No. 46-08786-569736

Mine: No. 57 Mine

**ORDER ACCEPTING APPEARANCE**  
**DECISION APPROVING SETTLEMENT**  
**ORDER TO MODIFY**  
**ORDER TO PAY**

Before: Judge Sullivan

It is **ORDERED** that the Conference and Litigation Representative (CLR) be accepted to represent the Secretary in accordance with the notice of limited appearance he has filed with the penalty petition. *Cyprus Emerald Resources Corporation*, 16 FMSHRC 2359 (Nov. 1994).

This case is before me upon petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977. The Secretary has filed an Amended Motion to Approve Settlement and has set forth the factual basis for the proposed modifications. The Respondent has agreed to the proposed changes. The originally assessed amount for the citations at issue was \$19,574.00 and the proposed settlement amount is \$11,684.00.

The proposed settlement includes:

Citation/ Order No.	Originally Proposed Assessment	Settlement Amount	Modifications
9568170	\$ 8,095.00	\$ 4,047.00	Reduce penalty
9568171	\$ 2,641.00	\$ 2,641.00	No change
9590118	\$ 3,841.00	\$ 1,920.00	Reduce penalty
9590119	\$ 1,156.00	\$ 1,156.00	No change
9590120	\$ 3,841.00	\$ 1,920.00	Reduce penalty
<b>Total</b>	<b>\$ 19,574.00</b>	<b>\$ 11,684.00</b>	

The Petition for Assessment of Civil Penalty filed by the Secretary of Labor on March 2, 2023, indicates that, as of January 12, 2023, this mine alone had unpaid penalties of \$136,399.37, with delinquent amounts going back as far as 2017. Though it does not go back that far, the Mine Safety and Health Administration's Mine Data Retrieval System ("MDRS") reflects that Nufac still owes large amounts, with many unpaid penalties shown as delinquent and referred to the United States Department of the Treasury for collection.<sup>1</sup>

The MDRS also indicates that some of the unpaid penalties were reduced from the originally proposed amounts as the result of Commission judges approving joint motions for settlement in civil penalty proceedings. *See, e.g.*, Unpublished Decision Approving Settlement, *Nufac Mining Company, Inc.*, No. WEVA 2020-0223 (Apr. 30, 2021) (ALJ). Even when a Judge approved an installment payment plan (as has been requested here), it appears that Nufac did not comply with the payment plan. *See* Unpublished Decision Approving Settlement, *Nufac Mining Company, Inc.*, Nos. WEVA 2021-0254 & WEVA 2022-0065 (Jan. 21, 2022) (ALJ).<sup>2</sup>

Commission judges review proposed settlements to ensure that they are "fair, reasonable, appropriate under the facts, and protect[ive] of the public interest." *Am. Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016). I greatly question whether approving a settlement is consistent with the public interest when all indications are that it will be years, if ever, before even the reduced penalty amount is paid. However, here I will forgo denying the motion for settlement because the mine is presently shown on the MDRS as having gone into Non-Productive status within the past year, with no employees working so far in 2023.

The parties have set forth justifications for the modifications in the motion filed by the Secretary. As required by the Mine Act, I have reviewed the motion and penalty criteria and evaluated the proposed settlement pursuant to the requirements set forth in Sections 110(i) and 110(k). The parties agree to the size of this operator, good faith abatement, and the ability to pay. The history of violations has been considered. The negligence and gravity of the violations are addressed in the motion, in the citation, and in the file in general.

I accept the representations and modifications of the Secretary as set forth in the motion to approve settlement. I have considered the representations and documentation submitted, find that the modifications are reasonable, and conclude that the proposed settlement is appropriate under the criteria set forth in Section 110(i) of the Act. The amended motion to approve settlement is **GRANTED**.

---

<sup>1</sup> The Court requested via email that the Secretary confirm the reliability of the delinquency data on the MDRS, but the Secretary indicated that she would not respond to the Court's inquiry.

<sup>2</sup> I further note that this apparent failure to pay even reduced penalties occurred *after* Nufac, along with other related mine operators, had agreed to an installment payment plan for unpaid penalties incurred for citations issued between May 3, 2014, and May 3, 2019. *See* Press Release, U.S. Dep't of Justice, U.S. Attorney for the Western District of Virginia, United States Announces Civil Settlement to Collect All Debts Owed by Justice Entities for Violations of Federal Mine Safety Act (April 1, 2020) <https://www.justice.gov/usao-wdva/pr/united-states-announces-civil-settlement-collect-all-debts-owed-justice-entities> (last visited July 7, 2023).

It is **ORDERED** that the Respondent pay the Secretary of Labor the sum of **\$11,648.00** over the course of five consecutive monthly payments of \$1,947.00 and one final payment \$1,949.00, with the first payment due on August 1, 2023, and each subsequent payment due on the first day of each subsequent month until the total penalty amount is fully paid. If any payment is more the 15 days delinquent, then the entire remaining balance shall become immediately due and payable.<sup>3</sup>



John T. Sullivan  
Administrative Law Judge

Distribution (by email):

David C. Trent, Conference Litigation Representative, U.S. Department of Labor MSHA, 4499 Appalachian Highway, Pineville, WV 24874 ([Trent.David@DOL.GOV](mailto:Trent.David@DOL.GOV))

Christopher D. Pence, Hardy Pence PLLC, 10 Hale Street, 4th Floor, Charleston, WV 25329 ([cpence@hardypence.com](mailto:cpence@hardypence.com))

Scott Wickline, Hardy Pence PLLC, 10 Hale Street, 4th Floor, Charleston, WV 25329 ([Scott@hardypence.com](mailto:Scott@hardypence.com))

---

<sup>3</sup> Please pay penalties electronically at [Pay.Gov](https://www.pay.gov), a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508>. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration, P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers.