

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

Office of Administrative Law Judges  
721 19th Street, Suite 443  
Denver, CO 80202-2536  
303-844-3577 FAX 303-844-5268

July 24, 2014

TWENTYMILE COAL COMPANY,  
Contestant

v.

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

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

v.

TWENTYMILE COAL COMPANY,  
Respondent

**CONTEST PROCEEDINGS**

Docket No. WEST 2008-0788-R  
Order No. 7622426; 03/12/2008

Docket No. WEST 2008-1093-R  
Order No. 6686312; 05/06/2008

Docket No. WEST 2008-1094-R  
Citation No. 6686313; 05/06/2008

Mine ID 05-03836  
Foidel Creek Mine

**CIVIL PENALTY PROCEEDINGS**

Docket No. WEST 2009-0333  
A.C. No. 05-03836-169779-01

Docket No. WEST 2009-0579  
A.C. No. 05-03836-175445-01

Docket No. WEST 2009-1174  
A.C. No. 05-03836-189502-02

Foidel Creek Mine

**DECISION APPROVING SETTLEMENT ON REMAND**

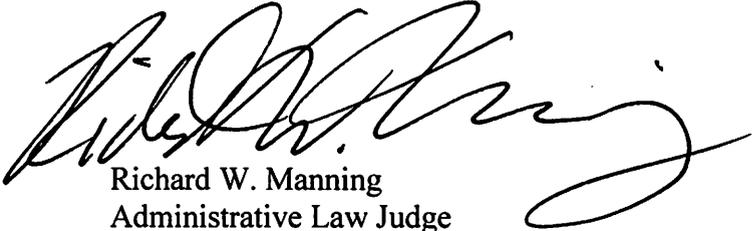
On June 13, 2014, the Commission issued a decision in these consolidated proceedings. 36 FMSHRC \_\_\_\_ (June 2014). In its decision, the Commission affirmed in part and remanded in part my decision of October 18, 2010. 32 FMSHRC 1431 (Oct. 2010) (ALJ). In my original decision, I determined that the Secretary established a violation of 30 C.F.R. § 75.400 in Order No. 6686312 and a violation of 30 C.F.R. § 360(a)(1) in Citation No. 6685313<sup>1</sup> and that the violations were of a significant and substantial (“S&S”) nature. 32 FMSHRC at 1439-45, 1448-50. The Commission vacated my S&S findings and remanded this issue for further proceedings

<sup>1</sup> The MSHA inspector issued Citation No. 6685313 as a section 104(d)(2) order but the Secretary modified it at the hearing to a section 104(a) citation with high negligence. 32 FMSHRC at 1449.

consistent with its decision.<sup>2</sup> The specific issues of fact on remand are described in the Commission's decision. Slip op. at 12.

Consistent with the Commission's decision, I encouraged the parties to settle the S&S issue and, if a settlement was not possible, I ordered them to file statements of position. On July 18, 2014, the parties filed a motion to approve settlement of the remaining issues in these cases. The parties agreed to modify the gravity in the order and citation from "reasonably likely" to "unlikely" and to strike the S&S determinations. In WEST 2009-333, the parties proposed that the civil penalty for Order No. 6686312 should remain unchanged at \$50,700 and the penalty for Citation No. 6686313 should be reduced from \$50,700 to \$10,000.<sup>3</sup>

I have considered the representations and documentation submitted and I conclude that the proposed settlement is appropriate under the criteria set forth in section 110(i) of the Act. The motion to approve the settlement of these items is **GRANTED** and Peabody Twentymile Mining, LLC, is **ORDERED TO PAY** the Secretary of Labor the sum of \$60,700 within 40 days of the date of this decision.<sup>4</sup> Upon payment, these consolidated proceedings are **DISMISSED**.

  
Richard W. Manning  
Administrative Law Judge

Distribution:

Jennifer A. Casey, Esq., Office of the Solicitor, U.S. Department of Labor, 1244 Speer Blvd., Suite 515, Denver, CO 80204-3516

R. Henry Moore, Esq., Jackson Kelly, 3 Gateway Center, Suite 1500, 401 Liberty Ave., Pittsburgh, PA 15222

RWM

---

<sup>2</sup> The remanded citation and order are at issue in docket numbers WEST 2008-1093-R, WEST 2008-1094-R, and WEST 2009-333 only.

<sup>3</sup> The Secretary originally proposed a total penalty of \$101,400 for the citation and order and I assessed a total penalty of \$55,000 in my decision. 32 FMSHRC at 1462. The remaining six citations and orders in WEST 2009-333 have been resolved and are not at issue on remand.

<sup>4</sup> Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390. The payment should reference WEST 2009-333, A.C. No. 05-03836-169779-01.