

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **12-MSRC-092**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

FINAL ORDER

BELL COUNTY COAL CORP.

RESPONDENT

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Bell County Coal Corp., and the members of the Commission having reviewed the Settlement Agreement filed on or after today in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and **pre-hearing** conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**.

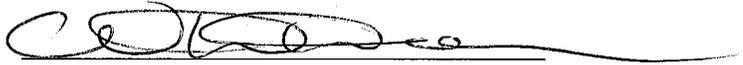
A copy is attached hereto;

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);

6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy

of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 11TH day of October 2012.

A handwritten signature in black ink, appearing to read 'W. D. Doan', is written over a horizontal line.

Hon. William D. Doan, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 19TH day of October 2012:

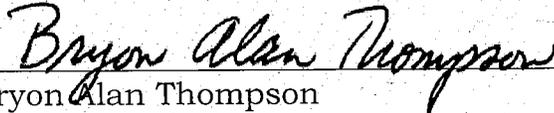
HON. BILLY SHELTON
151 N. EAGLE CR. DR. STE 310
LEXINGTON, KY 40509

And by messenger mail to:

HON. TAMARA J. PATRICK
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ **564- 2356**
FAX 502/ 564 - 9212
Counsel for OMSL

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601



Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 12-MSRC-092**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

VS.

SETTLEMENT AGREEMENT

BELL COUNTY COAL CORPORATION

RESPONDENT

WHEREAS, Bell County Coal Corporation ("BCCC") is a Delaware corporation, authorized to conduct business in the Commonwealth of Kentucky, and was so specifically on June 20, 2011;

WHEREAS, on or about June 20, 2011, BCCC operated a coal mine located near Premier, in Bell County, Kentucky, as the holder of Kentucky Mine License No. 1101-U-010, and identified as the Jellico No. 1 mine (hereinafter "the Mine");

WHEREAS, on or about June 20, 2011, between 6:20 a.m. and 6:40 a.m., the Mine became partially inundated with water during a greater than 100-year frequency rainfall event that resulted in flooding throughout Bell County, Kentucky, including the area of the Mine;

WHEREAS, the inundation of the Mine occurred when various drainage ditches above the Mine's portal failed during the heavy rainfall event, and substantial rainwater entered into the Mine at its portal trapping three miners underground for several hours;

WHEREAS, upon becoming aware of the inundation of the Mine, BCCC immediately took remedial action to divert water away from the Mine's portal and began to pump water from the Mine so that three BCCC miners were able to safely exit the Mine unharmed;

WHEREAS, during the commotion associated with the Mine's inundation and BCCC's implementation of remedial action, BCCC failed to give notice within fifteen (15) minutes of the Mine's inundation to the Office of Mine Safety and Licensing ("OMSL"); and,

WHEREAS, OMSL was notified of the mine inundation by Douglas Hewitt, Ky. Division of Emergency Management Duty Officer at 8:38 a.m.; and

WHEREAS, after an investigation of the inundation, on August 12, 2011 OMSL issued Notice of Non-Compliance ("NNC") No. 1173-02 citing BCCC with a violation of KRS 352.180(1) for its failure to timely report the Mine's inundation to OMSL; and

WHEREAS, OMSL filed the instant Complaint against BCCC, requesting, among other things, probation of BCCC's mine license, and that BCCC be assessed a civil penalty of no less than fifty thousand dollars (\$50,000).

NOW, THEREFORE, in acknowledgement of the foregoing recitals and in consideration of the promises expressed herein, OMSL and BCCC agree as follows:

1. BCCC admits the violation of KRS 352.180(1) as cited in NNC No. 1173-02 and agrees that the NNC was validly issued. BCCC further agrees that this Settlement Agreement and any final Order issued herein by the Mine Safety Review Commission ("MSRC") will be considered by the Commission to constitute a "first offense," as that term is defined at 805 KAR 8:010, Section 1(13).

2. BCCC agrees to pay and OMSL agrees to accept a reduced civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) for the violation of KRS 352.180(1). Payment of the civil penalty shall be made within thirty (30) days of the entry of a Final Order, incorporating the terms of this Settlement Agreement by the MSRC. Payment shall be made in the form of a money order, cashier's check, or certified check made payable to the Kentucky State Treasurer and mailed to the Kentucky Office of Mine Safety and Licensing, ATTN: Amy Denham, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky 40601. The payment shall reference the file number and BCCC's name to ensure that the proper amounts are credited for payment.

3. Full and complete compliance with the terms in Paragraph No. 2 of this Settlement Agreement shall constitute a satisfactory disposition of the NNC as set out in this Settlement Agreement.

4. Failure to timely comply with the terms in Paragraph 2 will result in the civil penalty sought by OMSL in the Complaint filed herein in the amount of fifty thousand dollars (\$50,000) becoming immediately due and payable without further hearing, and shall result in a circuit court action to collect the civil penalty.

5. This Settlement Agreement pertains to and resolves only the violation and NNC specifically set out herein, and no other.

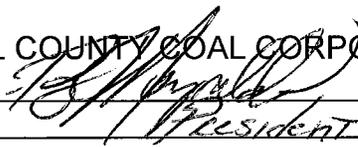
6. BCCC waives its right to any further administrative hearing before the MSRC or to any judicial review of the NNC referenced in this Settlement Agreement.

7. This Settlement Agreement shall be of no force or effect until the entry of a Final Order regarding BCCC, incorporating the terms of this Settlement Agreement by the MSRC.

8. This Settlement Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky and shall not be modified except in writing as agreed to by OMSL and BCCC.

AGREED TO BY:

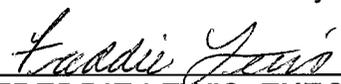
BELL COUNTY COAL CORPORATION

By: 
Its: President

Date: 10/9/12


HON. BILLY R. SHELTON
Counsel for Bell County Coal Corporation

Date: 10/10/12


FREDDIE LEWIS, EXECUTIVE DIRECTOR
KY Office of Mine Safety and Licensing

Date: 10-11-12


TAMARA J. PATRICK, Staff Attorney
Counsel for KY Office of Mine Safety
and Licensing

Date: 10-11-12