

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **13-MSRC-120**

BLUE DIAMOND COAL COMPANY

PETITIONER

FINAL ORDER

OFFICE OF MINE SAFETY AND LICENSING

RESPONDENT

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Office of Mine Safety and Licensing (OMSL) and Blue Diamond, and the members of the Commission having reviewed the Settlement Agreement filed on or after April 10, 2014 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

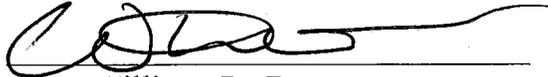
1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and any pre-hearing conferences are cancelled;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material 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 10TH day of April 2014.



Hon. William D. Donan
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 11TH day of April 2014:

HON. HELENA RACIN JACKSON
BLUE DIAMOND COAL COMPANY
120 PROSPEROUS PL, SUITE 110
LEXINGTON, KY 40509

And by messenger mail to:

HON. CARRIE B. SLAYTON
OFFICE OF GENERAL COUNSEL
NATURAL RESOURCES LEGAL DIVISION
2 HUDSON HOLLOW
FRANKFORT, KENTUCKY 40601

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. 13-MSRC-120**

BLUE DIAMOND COAL COMPANY

PETITIONER

v.

**SETTLEMENT AGREEMENT BETWEEN
BLUE DIAMOND COAL COMPANY & OMSL**

OFFICE OF MINE SAFETY & LICENSING

RESPONDENT

WHEREAS, Blue Diamond Coal Company ("Blue Diamond") is a Delaware corporation authorized to conduct business in the Commonwealth of Kentucky, and was so specifically on August 9, 2013;

WHEREAS, on August 9, 2013, Blue Diamond operated a coal mine located near Slemp, in Perry County, Kentucky as the holder of Kentucky Mine License No. 1303-U-002 and identified as the #75 mine ("the mine");

WHEREAS, on August 9, 2013, an authorized representative of the Office of Mine Safety and Licensing ("OMSL") conducted an inspection and observed two (2) roof control violations in the mine;

WHEREAS, on August 9, 2013 the OMSL representative issued to Blue Diamond Closure Order No. 13329-003 citing a violation of 805 KAR 5:030, Section 2(1)(a) due to physical evidence (scoop tire tracks) present in the #1 heading on (003) section that indicated a person had traveled under unsupported roof while cleaning the working place;

WHEREAS, on August 9, 2013 the OMSL representative issued to Blue Diamond Closure Order No. 13329-004 citing a violation of 805 KAR 5:030, Section 2(1)(a) due to physical evidence (scoop tire tracks) present in the #2 heading on (003) section that indicated a person had traveled under unsupported roof while cleaning the working place;

WHEREAS, on August 16, 2013, OMSL issued a Notice of Proposed Assessment in the amount of One Thousand Seventy Eight Dollars (\$1,078) for each Closure Order referenced herein;

WHEREAS, on September 12, 2013, Blue Diamond filed timely Petitions for Review regarding each Closure Order referenced herein;

WHEREAS, a formal hearing in these matters has been scheduled before the Mine Safety Review Commission ("MSRC") on June 12, 2014 at 10:00 a.m. and the parties wishing to cancel said hearing in consideration of the Agreement set out herein;

NOW, THEREFORE, in acknowledgement of the foregoing recitals and in consideration of the promises expressed herein, Blue Diamond and OMSL hereby agree to the following:

1. Blue Diamond admits the violations of 805 KAR 5:030, Section 2(1)(a) cited in Closure Order Nos. 13329-003 and 13329-004, but the parties agree that Section Foreman Jonathan Morton is not the person responsible for the violations.

2. Blue Diamond shall pay the penalty assessed in the amount of One Thousand Seventy Eight Dollars (\$1078) for the violation cited in Closure Order No. 13329-003.

3. Blue Diamond shall pay the penalty assessed in the amount of One Thousand Seventy Eight Dollars (\$1078) for the violation cited in Closure Order No. 13329-004.

4. Payment of the civil penalty shall be made within thirty (30) days of the entry of the 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 Hislope, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky 40601. The payment shall reference the administrative action number and closure order numbers to ensure that the proper amounts are credited for payment.

5. Full and complete compliance with the terms in Paragraph No. 5 of this Settlement Agreement shall constitute a satisfactory disposition of the Closure Orders referenced herein.

6. Blue Diamond waives its right to any further administrative hearing before the MSRC or to any judicial review of Closure Order Nos. 13329-003 and 13329-004.

7. This Settlement Agreement pertains to and resolves only the violations cited in Closure Order Nos. 13329-003 and 13329-004 and does not apply to any other person, violation, citation, or licensed facility.

8. This Settlement Agreement and any final order issued herein by the MSRC will be considered by the Commission to constitute a "first offense," as that term is defined at 805 KAR 8:060, Section 1(2).

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

10. Blue Diamond Coal Company and OMSL acknowledge and agree that there are no further promises, inducements, representations or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

11. 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 Blue Diamond and OMSL.

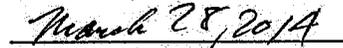
AGREED TO BY:

BLUE DIAMOND COAL COMPANY

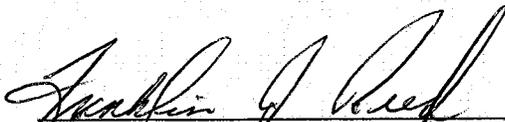
DATE



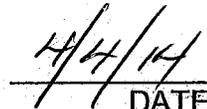
HON. HELENA JACKSON
Counsel for Petitioner



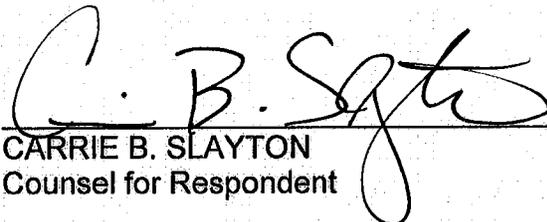
March 28, 2014
DATE



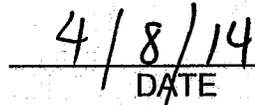
FRANKLIN REED, EXECUTIVE DIRECTOR
OMSL



4/4/14
DATE



CARRIE B. SLAYTON
Counsel for Respondent



4/8/14
DATE