

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 Certificate holder 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 the Certificate holder, 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 Certificate holder, 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 4TH day of November 2010.



Joe F. Childers, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 5TH day of November 2010:

HON. MIKEY T. WEBSTER
HON. TROY N. NICHOLS
WYATT, TARRANT & COMBS LLP
250 WEST MAIN, STE 1600
LEXINGTON KY 40507
Counsel for Respondents

And by messenger mail to:

Hon. C. Michael Haines
Office of General Counsel
#2 Hudson Hollow
Frankfort, Kentucky 40601
(502) 564-2356
FAX: (502) 564-9212

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 NOS. 09-MSRC-164 AND 09-MSRC-180**

**COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING**

COMPLAINANT

v.

**CHEYENNE MINING, INC.,
CARL HOWARD AND
KELVIN HOPKINS**

RESPONDENTS

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 4th day of ~~October~~ ^{November}, 2010, by the Complainant, COMMONWEALTH OF KENTUCKY, OFFICE OF MINE SAFETY AND LICENSING ("OMSL"), and Respondents, CHEYENNE MINING, INC. ("Cheyenne"), CARL HOWARD ("Howard") and KELVIN HOPKINS ("Hopkins"). All of the foregoing collectively may hereinafter be referred to as the "Parties." The Parties hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration of the final resolution of this consolidated action against Respondents, and the cancellation of the hearing as it pertains to Respondents currently scheduled for October 14, 2010, Respondents do not admit the violations alleged in the OMSL complaint that initiated this disciplinary proceeding, nor that any violations occurred on the date asserted in said complaint at Cheyenne Mining, Inc.'s Mine No. 11,

but in the interest of resolving all matters raised herein, Respondents hereby agree to the following:

Cheyenne Mining, Inc.:

1. Cheyenne agrees to make payment in the amount of Five Hundred Dollars and 00/100 (\$500.00) in settlement of Administrative Action No. 09-MSRC-164, the proposed penalty assessment action based on Non-Compliance/Closure Order No. 09627-028.

2. The Parties agree that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission shall not be considered by the Commission to constitute a "first offense," as that term is defined at 805 KAR 8:010(5), against Cheyenne.

Carl Howard:

3. OMSL agrees to dismiss its Complaint filed on July 8, 2009 as Administrative Action No. 09-MSRC-180 with respect to Howard.

4. Mr. Howard shall be deemed to have committed no violation of Kentucky's mine safety laws or regulations in connection with his conduct described in the allegations of the Complaint.

5. Mr. Howard shall receive no penalty for his conduct relating to the allegations contained in the Complaint.

6. The Parties agree that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission shall not be considered by the Commission to constitute a "first offense," as that term is defined at 805 KAR 8:010(5), against Howard.

Kelvin Hopkins:

7. All certificates issued to Hopkins by the Commonwealth of Kentucky shall be probated for a period of ninety (90) days from the date of acceptance of this Settlement Agreement by the Mine Safety Review Commission.

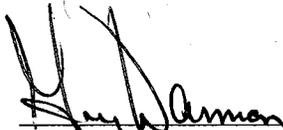
8. During the probation period set forth in Paragraph 7 above, Hopkins shall comply with all state and federal mine safety laws and regulations. The willful violation by Hopkins of any of said laws or regulations, unless otherwise specified herein, may result in OMSL filing a motion with the Mine Safety Review Commission to probate or revoke any or all certifications issued to him by the Commonwealth of Kentucky.

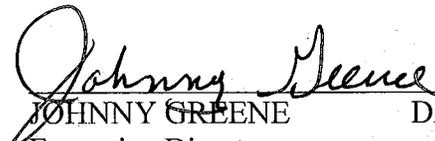
Additional Terms and Provisions:

9. Nothing in this agreement shall be considered an admission of fault or liability on the part of Cheyenne, Howard or Hopkins. Further, nothing in this agreement shall be used in any other proceedings.

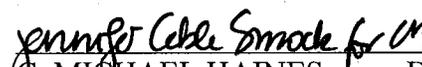
10. The Parties acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

[SIGNATURES TO FOLLOW IN COUNTERPARTS]


GREG DAMRON 11-4-10
DATE
CHEYENNE MINING, INC.
5363 Collins Highway
Pikeville, Kentucky 41501


JOHNNY GREENE 11-8-2010
DATE
Executive Director
Kentucky Office of Mine Safety &
Licensing
P.O. Box 2244
Frankfort, Kentucky 40602


CARL HOWARD 11/4/10
DATE
Box 78
Feds Creek, Kentucky 41524


C. MICHAEL HAINES 11/4/10
DATE
Office of General Counsel
Energy & Environment Cabinet
2 Hudson Hollow
Frankfort, Kentucky 40601
Telephone: (502) 564-2356
Fax: (502) 564-9212


KELVIN HOPKINS 11/4/10
DATE
2227 Shelby Dry Fork Road
Shelbiana, Kentucky 41562

COUNSEL FOR COMPLAINANT


MICKEY T. WEBSTER 11/4/10
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Lexington, Kentucky 40507-1746
Telephone: (859) 233-2012
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COUNSEL FOR RESPONDENTS