

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **14-MSRC-033**

COMMONWEALTH OF KENTUCKY,
DIVISION OF MINE SAFETY

COMPLAINANT

FINAL ORDER

MAYO RESOURCES, INC.

RESPONDENT

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Division of Mine Safety (DMS) and Mayo Resources, and the members of the Commission having reviewed the Settlement Agreement filed on or after August 7, 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 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
6. 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 14TH day of August 2014.

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

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 15TH day of August 2014:

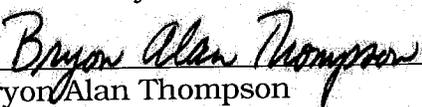
MARCO RAJKOVICH
RAJKOVICH, WILLIAMS, KIRPATRICK & TRUE PLLC
3151 BEAUMONT CENTRE CIRCLE, SUITE 375
LEXINGTON KY 40513

And by messenger mail to:

HON. JENNIFER C. SMOCK
OFFICE OF GENERAL COUNSEL
#2 HUDSON HOLLOW
FRANKFORT KY 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 NO. 14-MSRC-0**

KENTUCKY DIVISION OF MINE SAFETY

COMPLAINANT

v.

**SETTLEMENT AGREEMENT BETWEEN
DMS AND MAYO RESOURCES, INC.**

MAYO RESOURCES, INC.

RESPONDENT

WHEREAS, Mayo Resources Inc. ("Mayo") is a Kentucky corporation authorized to conduct business in the Commonwealth of Kentucky, and was so specifically on February 20, 2013;

WHEREAS, on February 20, 2013, Mayo operated a coal mine located near Ulysses, in Lawrence County, Kentucky, as the holder of Kentucky Mine License No. 1305-S-006, and identified as the No. 7 mine (hereinafter "the Mine");

WHEREAS, on February 20, 2013, at 1:00 a.m., a serious mining accident occurred at the Mine when the highwall fell into the pit area seriously injuring the forklift operator;

WHEREAS, on February 20, 2013, at 1:02 a.m., Mayo reported the accident to the Mine Safety and Health Administration and at 2:22 a.m. reported the accident to the Division of Mine Safety (hereinafter "DMS");

WHEREAS, after an investigation of the accident, on March 28, 2013, DMS issued Notice of Non-Compliance No. 1375-001 citing Mayo with a violation of KRS

352.180(1) which requires the mine foreman or his designee to notify DMS within fifteen (15) minutes of having actual knowledge of a serious physical injury at a mine;

WHEREAS, DMS filed the instant Complaint against Mayo, requesting probation of the Mine's license and that Mayo be assessed a civil penalty pursuant KRS 352.180(4);

WHEREAS, Mayo specifically denies the commission of or responsibility for the violation cited in Non-Compliance No. 1375-001 and alleged in DMS's Complaint, citing reasonable defenses for its reporting actions to DMS; and

WHEREAS, the parties desire to resolve the above referenced Non-Compliance and penalty assessment without the necessity for further litigation;

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

1. Mayo agrees to pay and DMS agrees to accept a civil penalty in the amount of five thousand dollars (\$5,000).

2. 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 Mine Safety Review Commission (hereinafter "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 Division of Mine Safety, ATTN: Beth Minch, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky 40601. The payment shall reference the case number and case name to ensure that the proper amounts are credited for payment.

3. Mayo agrees that it will conduct Supplemental Awareness Training for all of its mine site supervisors which will address Kentucky accident reporting requirements. This training shall be in addition to the instruction that is given at Annual Refresher Training. Additionally, Beech Fork Processing, Inc., Mayo's parent company, agrees that it will conduct similar Supplemental Awareness Training for all of its foremen and superintendents employed by it or the following affiliated companies operating as part of the Martin County Energy Group (MCEG): Beech Fork Processing Plant, Inc., Coalburg Enterprises, Inc., Eagle Coal Company, Inc., Matrix Energy, LLC, Mayo Resources, Inc., Taurus Coal Company, Inc., Long Fork Development, Company, Inc., and Pinnacle Processing, Inc. Said training shall be completed within one hundred eighty (180) days of the entry of a Final Order approving this Settlement Agreement. Proof of said training shall be provided to the Division of Mine Safety, Franklin J. Reed, Director, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky 40601.

4. Full and complete compliance with the terms of this Settlement Agreement shall constitute a satisfactory disposition of Non-Compliance No. 1375-001.

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

6. Failure to comply with the terms of this Settlement Agreement in all material respects shall result in the immediate imposition of the minimum civil penalty of ten thousand dollars (\$10,000) prescribed in KRS 352.180(4), with credit for any amounts paid pursuant to Paragraph Nos. 1 and 2 above.

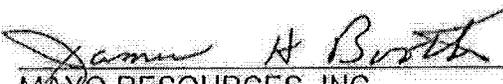
7. Mayo waives its right to any further administrative hearing before the MSRC or to any judicial review of the Non-Compliance referenced in this Settlement Agreement.

8. 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.

9. 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 DMS and Mayo.

10. DMS and Mayo 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.

AGREED TO BY:

 , President
MAYO RESOURCES, INC.

July 10, 2014
DATE

 , President
BEECH FORK PROCESSING, INC.

July 10, 2014
DATE


HON. MARCO M. RAJKOVICH, JR.
Counsel for Mayo Resources, Inc.


DATE


FRANKLIN REED, DIRECTOR
Division of Mine Safety

8/6/14
DATE


HON. JENNIFER CABLE SMOCK
Counsel for Division of Mine Safety

8/7/14
DATE