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Description of document: Federal Mine Safety and Health Review Commission

(FMSHRC) September 2017 Substantive Case (management update) Report and records related to

"Pipeline Report," 2017

Requested date: 20-August-2017

Released date: 14-September-2017

Posted date: 26-February-2018

Source of document: Federal Mine Safety and Health Review Commission

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From: Stacey Demps-Barrett <sdemps-barrett@fmshrc.gov>

Cc: Foia <foia@fmshrc.gov>
Sent: Thu, Sep 14, 2017 4:55 pm

Subject: FOIA Request - Monthly case management report and pipeline report -

FMSHRC - OGC & OCC

This email is in response to your FOIA request of August 20, 2017, in which you requested a "copy of the most recent monthly case management update report by the FMSHRC Office of General Counsel," and the "most recent 'pipeline report." Please find attached here for your records copies of the requested documents in partially redacted form.

Please be advised that the information was redacted under the Deliberative Process Privilege of FOIA Exemption 5, as the information clearly outlines the predecisional posture and/or individual deliberations of our appellate body concerning cases currently on review before the Commission. It also outlines FMSHRC's internal case review process and the detailed progression and internal posture of specific open cases, which are currently moving through the Commission's internal decisional process. Also attached here for your convenience is a list of the specific redactions on each page of each document.

As the cost to process this request was de minimis, there is no charge to you.

If you are unsatisfied with any part of this determination, you may seek the mediation and dispute resolution services of FMSHRC's FOIA Public Liaison at FOIA-Liaison@fmshrc.gov or the Office of Government Information Services at https://ogis.archives.gov/. You also have the right to appeal the decision to the Chairman of the Commission at FOIA-Appeals@FMSHRC.gov within 90 days of this response. For additional instructions on filing an appeal, please refer to our FOIA Rules at 29 C.F.R. § 2702.

In the meantime, kindly acknowledge receipt of this email with attachments.

Sincerely,

Stacey Demps Barrett
Attorney-Advisor/Chief FOIA Officer
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1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
Tel: 202/ 434-9939 Fax: 202/ 434-9944

List of Redacted Information

Document	Page #/row/column	Information Description	Exemption #
OGC Substantive Case Report (SCR)	p. 1 – Header A; subheader in row 1; and columns 3, 5, and 7-10	 Columns 3 and 5 and headers indicate stage and status of internal case review process. Columns 7-10 outline the current predecisional and individual deliberations or positions. 	Exemption # 5 – Deliberative process privilege
SCR	p. 2 – sub-header in row 1; and columns 3, 5, and 7-10	 Columns 3 and 5 and header indicate stage and status of internal case review process. Columns 7-10 outline the current predecisional and individual deliberations or positions. 	Exemption # 5 – Deliberative process privilege
SCR	p. 3 – sub-header in row 1; and columns 3, 5, and 7-10	 Columns 3 and 5 and header indicate stage and status of internal case review process. Columns 7-10 outline the current predecisional and individual deliberations or positions. 	Exemption # 5 – Deliberative process privilege
SCR	p. 4 – Header B; and columns 3, and 5-6	Outlines FMSHRC's internal case review process.	Exemption # 5 – Deliberative process privilege
SCR	p. 5 – columns 3, and 5- 6	Outlines FMSHRC's internal case review process.	Exemption # 5 – Deliberative process privilege
SCR	p. 6 – Header C; and columns 3 and 5	Outlines FMSHRC's internal case review process.	Exemption # 5 – Deliberative process privilege
Pipeline Report (PR)	p. 4 - columns 2 and 5	Outlines FMSHRC's internal case review process.	Exemption # 5 – Deliberative process privilege
PR	p. 5 - columns 4-9 and column 1, line 3 of rows 1-11	 Columns 1 and 4 indicate stage and status of internal case review process. Columns 5-9 outline the current predecisional and individual deliberations or positions. 	Exemption # 5 – Deliberative process privilege
PR	p. 6 – row 2, box 1	Outlines FMSHRC's internal case review process.	Exemption # 5 – Deliberative process privilege

SEPTEMBER 2017 SUBSTANTIVE CASE REPORT September 5, 2017

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No.	Case Name Docket No.	DFR Date	Description		
1	Consol Pennsylvania Coal Co. PENN 2013-385	9/8/15 Argument 11/8/16 Meeting 11/9/16	Whether the Judge erred in making high negligence and unwarrantable failure findings regarding water in a bleeder system.		
2	Consolidation Coal Co. VA 2012-42 et al.	11/30/15 Meeting 1/19/17	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."		
3 *	Canyon Fuel Co., LLC WEST 2015-635 et al. DECISION ISSUED 8/16/17	9/26/16 Argument 2/15/17 Meeting 2/16/17	Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.		

No.	Case Name Docket No.	DFR Date	Description	
4 *	Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al. WEVA 2015-904-D, et al.	6/9/16 Argument 2/2/17 Meeting 2/3/17	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.	
5	Nally & Hamilton Enterprises, Inc. KENT 2012-749, et al.	9/28/15 Meeting 3/30/17	Whether the Judge erred in concluding that two highwall violations were not significant and substantial.	
6	Arnold Stone Co. CENT 2016-95-M	8/26/16 Meeting 4/13/17	Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.	
7	Mach Mining, LLC LAKE 2014-746	9/29/16 Meeting 5/11/17	Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.	

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No.	Case Name Docket No.	DFR Date		Description		
8 *	Lehigh Anthracite Coal, LLC, and Wetzel PENN 2014-108 et al.	1/3/17 Argument 6/14/17 Meeting 6/15/17		Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."		
9 *	Sims Crane, Inc. SE 2015-315	6/1/16 Argument 6/29/17 Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.		
10	Pocahontas Coal Co. WEVA 2014-395-R, et al.	1/6/16 Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.		

B.

No.	Case Name & Docket No.	DFR Date		COMMENTS
1	Mach Mining, LLC LAKE 2014-77, et al.	7/1/16		Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2	The American Coal Co. LAKE 2011-701	11/28/16		Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
3	Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al. WEVA 2015-583-D, et al.	12/6/16		Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
4	Kentucky Fuel Corp. KENT 2015-383	1/12/17		Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
5	Alcoa World Alumina, LLC CENT 2015-128-M, et al.	2/17/17		Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.

No.	Case Name & Docket No.	DFR Date	COMMENTS
6	Sims Crane, Inc. SE 2016-81	2/22/17	Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
7	M-Class Mining, LLC LAKE 2012-519	5/12/17	Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
8 *	Signal Peak Energy, LLC WEST 2016-624-R	4/17/17	Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
9 *	Pappas v. CalPortland Co., et al. WEST 2016-264-DM	5/9/17	Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.

C.

No.	Case Name & Docket Number	DFR Date	Description
1	The American Coal Co.	5/25/17	On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
2	Wilson, et al. v. Armstrong Coal Co. KENT 2015-673-D, et al.	6/15/17	On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.
3 *	The American Coal Co.	7/25/17	Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.
4 *	Consol Pennsylvania Coal Co. PENN 2014-816	8/8/17	Whether the Judge erred in concluding that the operator violated a reporting requirement that applies when an accident has a "reasonable potential to cause death."
5	Rain for Rent WEST 2016-730-M	8/29/17	Whether the Judge erred by relying on state law in determining that a contractor violated a standard governing the inspection of pressure vessels.

D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Hopkins County Coal, LLC v. FMSHRC 6 th Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 <u>Decision issued 7/18/17</u> <u>Awaiting mandate</u>
3	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Decision issued 7/21/17 Awaiting mandate
4	Gary Servaes Enterprises v. Hirt and FMSHRC 10 th Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Motion to remand for additional administrative proceedings pending
5	Hamilton v. FMSHRC 9th Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Petitioner's brief due 9/18/17
6	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
7	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 th Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Secretary's brief due 9/11/17

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 th Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Briefing complete; awaiting oral argument order
9	John Richards Construction v. FMSHRC 9 th Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 Secretary's motion to dismiss pending
10	Lowe, et al. v. FMSHRC 9 th Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 Petitioners ordered to file Commission decision by 8/24/17
11	Peabody Twentymile, LLC v. FMSHRC 10 th Cir. No. 17-9540	Peabody Twentymile, LLC, 39 FMSHRC (July 31, 2017) (Nos. WEST 2015-64, et al.) (Whether the operator's use of polyurethane spray foam to seal the perimeters of concrete block ventilation stoppings violates 30 C.F.R. § 75.333(e)(1)(i).)	Petition for review filed 8/25/17 Index of agency record due 10/4/17
12	Canyon Fuel Co. v. FMSHRC 10 th Cir. No. 17-9541	Canyon Fuel, 39 FMSHRC (Aug. 16, 2017) (Nos. WEST 2015-635, et al.) (ALJ) (Whether the Commission erred in upholding two citations against the operator for the surface conditions at a mine opening where the operator's alternate escapeway terminates.)	Petition for review filed 8/31/17 Index of agency record due 10/10/17

Pipeline Meeting: July 19, 2017

Meeting Agenda

Workload - FY 2014 - 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

August Pipeline Meeting: TBD

Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2	FY 2016		2017
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	39	18	18
New (PDRs & PIRs granted/PTR)	19	12	19	22	20	13
Dispositions	31	30	39	43	20	9
Ending balance	57	39	19	18	18	22
Average pendency of	27	20	21	22	12	4.5
dispositions (months)	27	30	21	22	12	15
Average age of cases on hand	18	16	6	9	6	10
at year end (months)	10	10	O	9	O	10

^{*} As of July 19, 2017

New through Wilson, et al v. Armstrong Coal KENT 2015-0673

Dispositions through Bussen Quarries CENT 2015-0385

FY 2017 Dispositions

	Case		Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
6	Portable	EAJA 2015-0001	2/21/17	18
7	McNary v. Alcoa World Alumina	CENT 2015-0279	3/28/17	17
8	John Richards	WEST 2014-0440	5/11/17	19
9	Bussen Quarries	CENT 2015-0385	5/31/17	16
Avera	ge pendency			15

	Cases on Hand as of	July 19, 2017		
	Case		DFR	Age (Mos)
1	Consol Pennsylvania Coal	PENN 2013-0385	9/8/15	22
2	Nally & Hamilton Enterprises	KENT 2012-0749	9/28/15	21
3	Consolidation Coal	VA 2012-0042	11/30/15	19
4	Pocahontas Coal Co.	WEVA 2014-0395	1/6/16	18
5	Peabody Twentymile	WEST 2014-0930	1/8/16	18
6	Sims Crane	SE 2015-0315	6/1/16	13
7	Monongalia County Coal	WEVA 2015-0904	6/9/16	13
8	Mach Mining	LAKE 2014-0077	7/1/16	12
9	Arnold Stone	CENT 2016-0095	8/26/16	11
10	Canyon Fuel	WEST 2015-0635	9/26/16	10
11	Mach Mining	LAKE 2014-0746	9/29/16	10
12	American Coal	LAKE 2011-0701	11/28/16	8
13	Marshall County Coal	WEVA 2015-0583	12/6/16	7
14	Lehigh Anthracite	PENN 2014-0108	1/3/17	6
15	Kentucky Fuel Corp.	KENT 2015-0383	1/12/17	6
16	Alcoa World Alumina	CENT 2015-0128	2/17/17	5
17	Sims Crane	SE 2016-0081	2/22/17	5
18	Signal Peak	WEST 2016-0624	4/17/17	3
19	Pappas v. CalPortland	WEST 2016-0264	5/9/17	2
20	M-Class Mining	LAKE 2012-0519	5/12/17	2
21	American Coal (PIR)	LAKE 20114-0013	5/25/17	2
22	Wilson, et al v. Armstrong Coa	KENT 2015-0673	6/15/17	1
Average a	nge			10

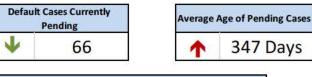
Substantive Case Status

As of July 18, 2017

	Case	Description	Meeting			
1	Consol Penn PENN 2013-0385	Ventilation violations - S&S and unwarrantable	Arg. Nov 8 Mtg. Nov 9	_	 	
	Peabody Twentymile WEST 2014-0930	Ventilation stoppings	Arg. Nov 10 Mtg. Nov 15			
3	Consolidation Coal VA 2012-0042	Roof control plan	Mtg. Jan 19			
4	Monongalia Cnty Coal WEVA 2015-0904	Interference by bonus plans	Arg. Feb 2 Mtg. Feb 3			
5	Canyon Fuel Company WEST 2015-0635	Alternate escapeways	Arg. Feb 15 Mtg. Feb 16			
6	Nally and Hamilton KENT 2012-0749	Highwall violations	Mtg. Mar 30			
7	Arnold Stone CENT 2016-0095	Safety lockout	Mtg. Apr 13			
8	Mach Mining LAKE 2014-0746	Cumulations	Mtg. May 11			
9	Lehigh Anthracite PENN 2014-0108	Sending miner into pit	Arg. Jun 14 Mtg. Jun 15			
10	Sims Crane SE 2015-0315	Suspended loads	Arg. Jun 29 Mtg. Jun 30			
	Pocahontas Coal Co. WEVA 2014-0395	Pattern of violations	Mtg. Jul 13			

Motions To Reopen - Pipeline Meeting Report

Fiscal Year 2017 Report Date 7/18/2017

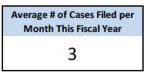












Historical Trends

