

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

OCT 19 2017

|                               |   |                           |
|-------------------------------|---|---------------------------|
| SECRETARY OF LABOR,           | : |                           |
| MINE SAFETY AND HEALTH        | : |                           |
| ADMINISTRATION (MSHA)         | : |                           |
|                               | : |                           |
| v.                            | : | Docket Nos. KENT 2012-749 |
|                               | : | KENT 2012-904             |
|                               | : | KENT 2012-1085            |
|                               | : |                           |
| NALLY & HAMILTON ENTERPRISES, | : |                           |
| INC.                          | : |                           |

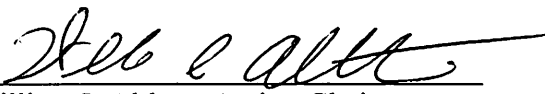
BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

**DECISION**

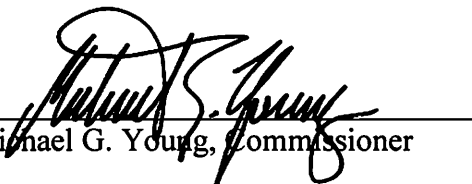
BY THE COMMISSION:

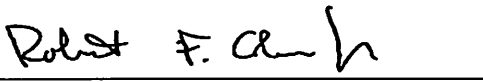
These proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et. seq. (2012) for violations of 30 C.F.R § 77.1001 and 30 C.F.R. § 77.1713(a). At issue is whether substantial evidence supports determinations made by the Judge in overturning “significant and substantial” (“S&S”) designations accompanying a citation and order issued to Nally & Hamilton Enterprises, Inc. by the Department of Labor’s Mine Safety and Health Administration.

Acting Chairman Althen and Commissioner Young vote to affirm the Judge's decision, while Commissioner Jordan and Commissioner Cohen vote to reverse the Judge's decision. The effect of the split decision is to allow the Judge's decision to stand as if affirmed. *Pennsylvania Elec. Co.*, 12 FMSHRC 1562 (Aug. 1990), *aff'd on other grounds*, 969 F.2d 1501 (3d Cir. 1992).

  
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William I. Althen, Acting Chairman

  
\_\_\_\_\_  
Mary Lu Jordan, Commissioner

  
\_\_\_\_\_  
Michael G. Young, Commissioner

  
\_\_\_\_\_  
Robert F. Cohen, Jr., Commissioner

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