

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

April 17, 2023

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
v. : Docket No. YORK 2021-0060
: A.C. No. 17-00022-533995
DRAGON PRODUCTS COMPANY, LLC :

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

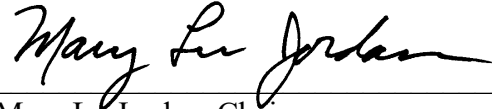
BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On August 19, 2021, the Commission received from Dragon Products Company, LLC (“Dragon”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

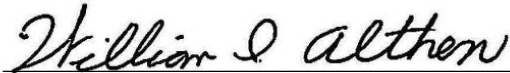
Dragon claims it never received the proposed penalty assessment from the Department of Labor. The Secretary of Labor does not oppose the request to reopen and concedes that the assessment was not delivered to the operator but rather, was returned to MSHA.

Section 105(a) states that if an operator “fails to notify the Secretary that [the operator] intends to contest the . . . proposed assessment of penalty . . . the proposed assessment of penalty shall be deemed a final order of the Commission. 30 U.S.C. § 815(a). Here, because the operator never had an opportunity to timely contest the proposed assessment, we conclude that the proposed penalty assessment did not become a final order of the Commission. This obviates any need to invoke Rule 60(b) of the Federal Rules of Civil Procedure. Accordingly, the operator’s motion to reopen is moot.

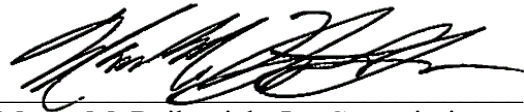
We deem the operator's motion a contest of the relevant penalties. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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