

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

May 18, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2022-0058
v.	:	A.C. No. 21-03663-540443
	:	
DUININCK, INC.	:	

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

ORDER

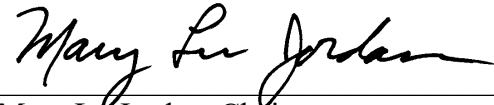
BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). The record reveals that the proposed assessment was delivered to the Operator on August 30, 2021. On September 22, 2021, the Mine Safety and Health Administration (“MSHA”) received full payment of \$1,359.00 for all three citations by a check dated September 9, 2021. A “To Whom It May Concern” letter from the operator accompanied the check. The signatory to the letter stated that he was an experienced and knowledgeable safety professional. The letter expressly disclaims any intention to contest the citation and demonstrates the payment of the penalty was a conscious payment by a knowledgeable operator.

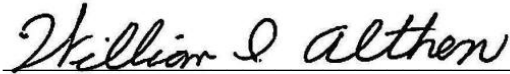
Subsequently, the operator filed a letter requesting reopening. Even there, however, the operator disclaims any desire to contest the citation. Instead, it asked for an opportunity to discuss its safety practices with MSHA.

30 C.F.R. § 100.6(a) provides MSHA with sole discretion to grant a request for a conference where issues may be discussed. The Commission grants reopening in accordance with the factors set forth in Rule 60(b) of the Federal Rules of Civil Procedure. *See* 29 C.F.R. 2700.1(b); Fed. R. Civ. P. 60(b). The operator does not allege a mistake, inadvertent conduct, excusable neglect, or other reason justifying relief that led to its payment and the proposed penalty assessment becoming a final order. The motion reflects that the operator made the deliberate choice to pay the penalties after receiving the penalty assessment rather than to contest the penalties before a Commission Administrative Law Judge.

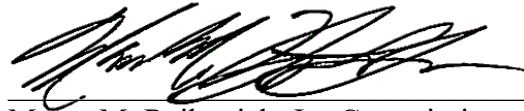
Accordingly, the request to reopen is DENIED.¹



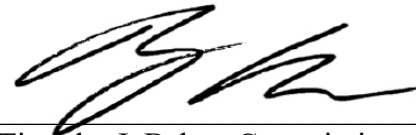
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

¹ We further note that the Commission cannot order MSHA to have a conference with an operator.

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