

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

August 30, 2018

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

v.

OAK GROVE RESOURCES, LLC

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Docket No. SE 2017-212  
A.C. No. 01-00851-431085

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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. (2012) (“Mine Act”). On June 27, 2017, the Commission received from Oak Grove Resources, LLC (“Oak Grove”) 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).

On February 13, 2017, Oak Grove received a proposed penalty assessment from the Secretary. On March 15, 2017, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

Oak Grove asserts that it has a centralized internal process for handling proposed assessments. Under this process, when any assessment is received from MSHA, they are scanned and e-mailed to the safety manager who reviews the assessments and underlying violations. The safety manager then marks those violations the company intends to contest on the assessment form, and mails the form to MSHA when he leaves work for the day.

In an affidavit, the safety manager asserts that, consistent with the process above, he timely mailed a contest of seven of the citations and orders within the assessment at issue to MSHA’s Civil Penalty Compliance Office on February 22, 2017. The operator believes that an error by the postal service resulted in the contest not being delivered to MSHA. The Secretary does not oppose the request to reopen or dispute the operator’s assertion that it timely mailed the contest to MSHA. We accept Oak Grove’s representation that it timely mailed a contest of seven of the citations and orders to MSHA.

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a). However, here Oak Grove, by timely mailing the contest of the assessment, effectively contested seven of the citations and orders, and their associated proposed penalties.

Having reviewed Oak Grove's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested seven of the proposed penalties within the proposed assessment. Accordingly, the operator's motion to reopen is moot, and this case is remanded to the Chief Administrative Law Judge for further proceedings on these seven citations and orders pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



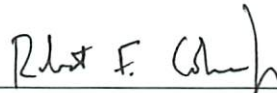
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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