

JULY 2005

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The July 2005 issue of the Commission decisions is being reprinted because of a publication error.

JULY 2005

No cases were filed in which Review was granted during the month of July

No cases were filed in which Review was denied during the month of July

COMMISSION ORDERS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

July 13, 2005

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

v.

WAKE STONE CORPORATION

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Docket No. SE 2004-185-M
A.C. No. 31-02071-26994

ORDER

On June 29, 2005, the Secretary of Labor filed a motion to dismiss this appeal as moot because the Secretary has vacated the citation that formed the basis for this case. Upon consideration of the Secretary's motion to dismiss, we hereby grant the motion. The direction for review in this case is vacated.


Michael F. Duffy, Chairman


Mary Lu Jordan, Commissioner


Stanley C. Suboleski, Commissioner


Michael G. Young, Commissioner

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Rizzuto on June 22, 2005 when counsel for the Secretary informed her of difficulties MSHA had encountered in serving papers on Rizzuto. *Id.* Rizzuto also asserts that he had every intention of contesting any proposed section 110(c) penalties against him. *Id.* at 2-3. The Secretary does not oppose Rizzuto's request for relief.

Here, the proposed penalty assessment was mailed to a nonexistent address. The agency had in fact previously sent mail to Rizzuto at his proper address. Mot. at Ex. B. Under these circumstances, we conclude that Rizzuto did not "receive" the penalty assessment, within the meaning of section 105(a) of the Mine Act and the Commission's Procedural Rules, until at least June 22, 2005. See *Roger Richardson*, 20 FMSHRC 1259, 1260 (Nov. 1998). In his motion to reopen this matter, filed with the Commission on June 23, 2005, Rizzuto clearly states his intent to contest the proposed penalty assessment against him. We conclude from this that Rizzuto timely notified the Secretary that he contests the proposed penalty. *Id.*

Accordingly, the proposed penalty assessment is not a final order of the Commission. We remand this matter to the Chief Administrative Law Judge for assignment to a judge. This case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Michael F. Duffy, Chairman



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ADMINISTRATIVE LAW JUDGE DECISIONS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001

July 8, 2005

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2002-126
Petitioner	:	A. C. No. 01-00329-03591
v.	:	
	:	
U.S. STEEL MINING COMPANY, INC.,	:	Concord Mine
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Melick

This case is before me upon a petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). The case was remanded by the Commission on May 16, 2005, for further proceedings. Petitioner has now filed a motion to approve a settlement agreement and to dismiss the case. A reduction in penalty to \$25.00, is proposed. I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is acceptable under the criteria set forth in Section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is **GRANTED**, and it is **ORDERED** that Respondent pay a penalty of \$25.00, within 40 days of this order.



Gary Melick
Administrative Law Judge
202-434-9977

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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July 14, 2005

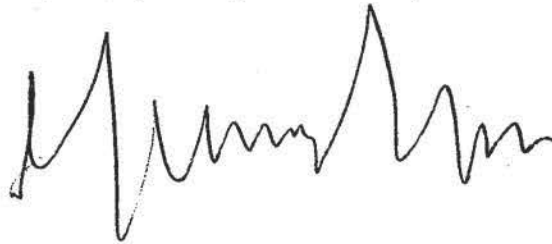
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2004-154-M
Petitioner	:	A. C. No. 31-02188-22481
v.	:	
	:	
CURRITUCK SAND INC.,	:	Bluebird #1
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Melick

This case is before me upon a petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). Petitioner has filed a motion to approve a settlement agreement and to dismiss the case. A reduction in penalty to \$1,100.00, is proposed. I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is acceptable under the criteria set forth in Section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is **GRANTED**, and it is **ORDERED** that Respondent pay a penalty of \$1,100.00, within 40 days of this order.



Gary Melick
Administrative Law Judge

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