

CCASE:

SOL (MSHA) V. T&F SAND & GRAVEL, REEDY COAL
KINKAID STONE, KEYSTONE COAL, PENN. ELECTRIC
SHANNOPIN MINING, JIM WALATERS, MID-CONTINENT
TARMAC CA, EASTSIDE ROCK, AND ISLAND CREEK

DDATE:

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TTEXT:

February 23, 1994

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION	:	
	:	
v.	:	
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T & F SAND & GRAVEL, INC.	:	Docket Nos. CENT 91-215-M
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REEDY COAL COMPANY, INC.	:	KENT 92-303
	:	
KINKAID STONE CO.	:	LAKE 92-199-M
	:	
KEYSTONE COAL MINING CORP.	:	PENN 91-960
	:	
PENNSYLVANIA ELECTRIC CO.	:	PENN 91-1011
	:	
KEYSTONE COAL MINING CORP.	:	PENN 91-1015
	:	
KEYSTONE COAL MINING CORP.	:	PENN 91-1017
	:	
KEYSTONE COAL MINING CORP.	:	PENN 91-1340
	:	
SHANNOPIN MINING CO.	:	PENN 92-385
	:	
JIM WALTER RESOURCES, INC.	:	SE 92-79
	:	
JIM WALTER RESOURCES, INC.	:	SE 92-208
	:	
MID-CONTINENT RESOURCES, INC.	:	WEST 90-383
	:	
TARMAC CALIFORNIA, INC.	:	WEST 91-498-M
	:	
EASTSIDE ROCK PRODUCTS	:	WEST 92-318-M
	:	
CONSOLIDATION COAL CO.	:	WEVA 91-139
	:	
ISLAND CREEK COAL CO.	:	WEVA 91-1231
	:	
CONSOLIDATION COAL CO.	:	WEVA 92-325
	:	

BEFORE: Holen, Chairman; Backley and Doyle, Commissioners

ORDER

BY THE COMMISSION:

In these civil penalty proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988) ("Mine Act"), the Secretary of Labor proposed penalties for citations issued to the mine operators listed above ("Operators"). In each proceeding, the presiding administrative law judge, in accordance with the Commission's decision in Drummond Co., Inc., 14 FMSHRC 661 (May 1992), remanded the proposed penalties to the Secretary for recalculation. Under Drummond, penalties were to be recalculated in accordance with the Secretary's regulations at 30 C.F.R. Part 100 without reference to or use of the "excessive history" provisions contained in his Program Policy Letter No. P90-III-4 (May 29, 1990).

On January 14, 1994, the Secretary filed with the Commission an Amended Motion to Reinstate Civil Penalty Proceeding ("Motion to Reinstate") in each proceeding. The Secretary asserts that each proceeding was "incorrectly remanded back to the Secretary since the case did not involve the issue of excessive history." The Secretary asks that these cases be reinstated to the Commission's active docket and that the Operators be granted the right to request hearings. No opposition has been received.

The judges' jurisdiction in these matters terminated when their Orders of Remand and Dismissal were issued. Commission Procedural Rule 69(b), 58 Fed. Reg. 12158, 12171 (March 3, 1993), to be codified at 29 C.F.R.

2700.69(b) (1993). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of a decision's issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). The Secretary did not file timely petitions for discretionary review within the 30-day period and the Commission did not sua sponte direct review of these cases. Thus, the judges' orders dismissing these proceedings became final decisions of the Commission 40 days after their issuance. 30 U.S.C. 823(d)(1). Under these circumstances, we deem the Motions to Reinstate to be requests for relief from final Commission decisions incorporating late-filed petitions for discretionary review. See, e.g., Island Creek Coal Co., 15 FMSHRC 962, 963 (June 1993).

Guided by Fed. R. Civ. P. 60(b)(1) & (6), the Commission has afforded relief from final judgments on the basis of inadvertence, mistake, and other reasons justifying relief. See, e.g., Klamath Pacific Corp., 14 FMSHRC 535, 536 (April 1992). It appears that the penalties proposed by the Secretary in these matters may not have been computed in accordance with the Secretary's
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1 Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823 (c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

~224

excessive history policy and, therefore, may have been improperly remanded to the Secretary under Drummond.

Accordingly, we reopen these proceedings and remand them to the Chief Administrative Law Judge. He shall reinstate them if he determines that they were improperly remanded to the Secretary.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner