FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

November 13, 2009

SECRETARY OF LABOR, :

MINE SAFETY AND HEALTH : ADMINISTRATION (MSHA) :

: Docket No. CENT 2009-716-M

v. : A.C. No. 14-01456-183840

:

BAYER CONSTRUCTION :

COMPANY, INC. :

BEFORE: Jordan, Chairman; Duffy, 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. (2006) ("Mine Act"). On August 11, 2009, the Commission received from Bayer Construction Company ("Bayer") a letter seeking to reopen a penalty assessment that may have become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

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).

The Secretary submits that upon reviewing the records in this proceeding, she has discovered that the proposed penalty was timely contested. The operator made its contest of the penalties at issue in a cover letter that also contained the payment check for some other penalties and did not include the proposed assessment form. The Secretary asserts that she has corrected her records and the agency is treating the matter as having been timely filed.

Having reviewed Bayer's request and the Secretary's response, we find the request to reopen to be moot. Bayer has timely contested the proposed penalty assessment, and therefore it did not become a final order of the Commission. The Secretary shall file a penalty petition within 45 days of the date of this order, if she has not done so already. This case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Mary	Lu Jordan, Chairman
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Chief Administrative Law Judge Robert J. Lesnick Federal Mine Safety & Health Review Commission 601 New Jersey Avenue, N.W., Suite 9500 Washington, D.C. 20001-2021