

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

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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