

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

December 14, 2010

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

v.

MOSAIC POTASH CARLSBAD INC.

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Docket No. CENT 2010-1226-M  
A.C. No. 29-00802-228600

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, 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 September 10, 2010, the Commission received from Mosaic Potash Carlsbad Inc. (“Mosaic”) a motion 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 assessment for Citation No. 6571486 was delivered on August 12, 2010, and that the motion to reopen was post-marked September 9, 2010, which falls within the 30-day time period for contesting a proposed assessment. She states that the Civil Penalty Compliance Office of the Department of Labor’s Mine Safety and Health Administration has accepted Mosaic’s motion to reopen as a timely contest and has added the citation to an active civil penalty proceeding (Docket No. CENT 2010-1166-M).

Having reviewed Mosaic's request and the Secretary's response, we find the request to reopen to be moot. The proposed penalty assessment did not become a final order of the Commission. Accordingly, the request to reopen is dismissed as moot.

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Mary Lu Jordan, Chairman

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Michael F. Duffy, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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Patrick K. Nakamura, Commissioner

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