

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

July 29, 2010

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2010-138-M
v.	:	A.C. No. 25-01052-191502
	:	
DOLEZAL SAND & GRAVEL	:	

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 November 10, 2009, the Commission received from Dolezal Sand & Gravel (“Dolezal”) 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 and is the subject of an active civil penalty proceeding (Docket No. CENT 2010-142-M). In that proceeding, the Secretary has filed a penalty petition, and the operator has filed an answer.

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

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Patrick K. Nakamura, Commissioner

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