

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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June 13, 2011

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2011-432-M
v.	:	A.C. No. 25-01033-224809
	:	
KEMBEL 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 February 18, 2011, the Commission received from Kembel Sand & Gravel (“Kembel”) 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 this request to reopen actually involves two other penalty cases: Docket Nos. CENT 2010-1072-M and CENT 2010-1073-M. With respect to Docket No. CENT 2010-1072-M, involving Citation Nos. 6426384 and 6426385, the operator successfully contested the proposed assessment, and a penalty petition was filed by the Secretary on September 13, 2010. The Secretary asserts that because the operator failed to answer the petition, she filed a motion for issuance of order of default on January 4, 2011. Instead of filing an answer, the operator appears to have filed this motion to reopen on February 18, 2011, with the Commission. Chief Administrative Law Judge Robert J. Lesnick issued a show cause order on March 15, 2011, and the operator filed a timely response to that order on April 8, 2011.

Because the matter is now proceeding before the Chief Judge, the motion to reopen with regard to these two citations is no longer necessary and is moot.

With respect to Docket No. CENT 2010-1073-M, involving Citation Nos. 6426382 and 6426383 contained on the same penalty assessment at issue, the Secretary states that the parties have agreed on a settlement and that a Decision Approving Settlement was issued by the Chief Judge on February 2, 2011. Therefore, we also dismiss the request as moot as to the penalties at issue in Docket No. CENT 2010-1073-M.

Having reviewed Kembel's request and the Secretary's response, we find the request to reopen to be moot in all respects. Accordingly, the request is dismissed.

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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