

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

**MAR 30 2015**

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

v.

PETRO CHEMICAL INSULATION, INC.

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Docket No. KENT 2014-606  
A.C. No. 15-00365-348946 V7D

BEFORE: Nakamura, Acting Chairman; Cohen and Althen, 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. (2012) (“Mine Act”). On June 25, 2014, the Commission received from Petro Chemical Insulation, Inc. (“Petro”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On May 3, 2014, Petro received a proposed penalty assessment from the Secretary. On May 26, 2014, MSHA deemed the proposed assessment to be a final order of the Commission when it appeared, due to an MSHA error, that the operator had not filed a Notice of Contest within 30 days. However, the proposed assessment did not become a final order of the Commission until June 2, 2014.

Petro asserts that it timely contested the penalty as it mailed its contest on May 30, 2014, and its contest was received by MSHA on June 2, 2014. The Secretary does not oppose the request to reopen and notes that the operator had timely contested the penalty, but due to an MSHA error, the case had been marked as delinquent.

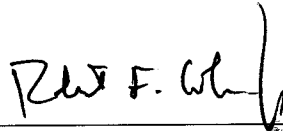
Having reviewed Petro’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator “fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty, . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission.” 30 U.S.C. § 815(a). Here, Petro notified the Secretary of the contest. This

obviates any need to invoke Rule 60(b) of the Federal Rules of Civil Procedure in order to consider reopening a final order.

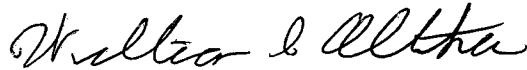
Accordingly, the operator's motion to reopen is moot, and this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

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