

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

July 27, 2011

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket Nos. CENT 2010-317-M
	:	CENT 2010-318-M
SPRING CREEK MATERIALS, INC.	:	
	:	

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). On July 14, 2011, Spring Creek Materials, Inc. (“Spring Creek”) filed with the Commission a document entitled “Petition for Discretionary Review.” Spring Creek seeks review of an order issued by Chief Administrative Law Judge Robert J. Lesnick on June 24, 2011, in which he ruled that the Secretary’s late filed penalty petitions were accepted and that Spring Creek’s Motions to Dismiss were denied.

We have determined that the judge’s June 24, 2011, decision is not a final decision ending his jurisdiction over this matter. In his decision, the judge found that the Secretary’s petitions for assessment of civil penalty should have been filed by May 3, 2010, but were filed on January 31, 2011. The judge determined that “given the unprecedented number of cases currently before the Commission, as well as the unprecedented number of penalty petitions pending before the Secretary, strict adherence to the 45-day time line is unrealistic.” Order at 2. Consequently, his decision is interlocutory in nature. As a result, Spring Creek’s petition is not a valid petition for discretionary review of a final decision under section 113(d) of the Mine Act, 30 U.S.C. § 823(d), but rather is in the nature of a petition for interlocutory review.

Pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76, the Commission may only grant interlocutory review if certain conditions are met. First, it may grant review if the judge has certified that his or her interlocutory ruling involves a controlling question of law and that immediate review will materially advance the final disposition of the proceeding. Second, it may grant review if the judge has denied a party’s motion for certification of the interlocutory

ruling to the Commission and the party files with the Commission a petition for interlocutory review within 30 days of the judge's denial of such motion for certification.

We have determined that neither condition set forth in Rule 76 has been met in this case. Accordingly, the petition filed by Spring Creek is denied.

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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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