

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

OCT 03 2014

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

v.

D & S MINING & EXPLORATION

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Docket No. WEST 2013-985-M
A.C. No. 24-01779-302683

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 July 23, 2013, the Commission received from D&S Mining and Exploration (“D&S”) a motion seeking to reopen a penalty assessment that had 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).

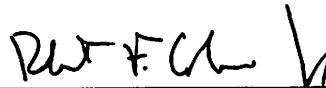
D&S asserts that it did not receive the proposed assessment and discovered the delinquency after it received a collection notice dated July 9, 2013. Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was mailed to D&S’ address of record, but a copy of the FedEx envelope reveals that the address was changed to another, handwritten, address, and then refused by recipient. MSHA mailed another copy of the proposed assessment and a delinquency notice to another address for D&S, and they were returned undelivered. MSHA referred this case to the Department of Treasury for collection on May 23, 2013. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure its address of record is an address that can receive future penalty assessments and that future penalty contests are timely filed.

Having reviewed D&S’ request and the Secretary’s response, we reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine

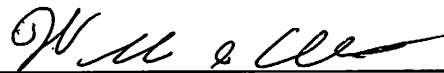
Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.¹ Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of civil penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

¹ The Commission previously granted relief to D&S from final orders under similar circumstances of alleged non-receipt of properly-sent proposed assessments in WEST 2012-1227 and WEST 2012-1228 (May 21, 2013). D&S is hereby placed on notice that the Commission will not grant relief in the future if similar circumstances arise again.

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