

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

OCT 21 2014

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

v.

CHEYENNE ELKHORN COAL
COMPANY, INC.

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Docket No. KENT 2013-1073
A.C. No. 15-17993-320807-03

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 September 25, 2013, the Commission received from Cheyenne Elkhorn Coal Company, Inc. (“Cheyenne”) a motion seeking to reopen two citations within a penalty assessment that had allegedly 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).

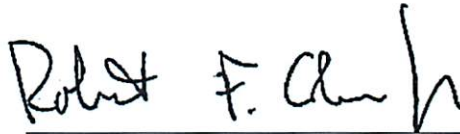
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that Cheyenne filed a timely contest on May 21, 2013, but MSHA mistakenly processed only two of the four citations checked on the proposed assessment contest form.

Having reviewed Cheyenne’s request and the Secretary’s response, we conclude that the penalty assessments for Citation Nos. 8279020 and 8278023 were properly contested and never became final. We therefore deny Cheyenne’s motion as moot, and remand this matter 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. Accordingly, consistent with Rule 28, the

Secretary shall file a petition for assessment of 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

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