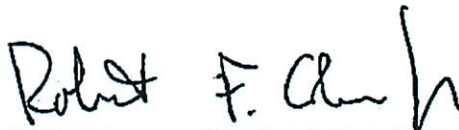


Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that a pre-penalty contest was filed for Citation No. 6617100. However, the proposed assessment was not contested and was in fact paid by check dated May 14, 2013. Brooks asserts that it mistakenly paid the penalty and its counsel discovered the error on July 3, 2013. The Secretary does not oppose the request to reopen, and urges the operator to adopt procedures to ensure that future penalty contests are timely filed.

Having reviewed Brooks' request and the Secretary's response, in the interest of justice, we hereby 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. 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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