

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 20, 2024

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

ST. MARYS CEMENT

Docket No. LAKE 2023-0265
A.C. No. 20-02434-582956

BEFORE: Jordan, Chair; Baker and Marvit, 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. (2018) (“Mine Act”). On March 8, 2024, the Commission received from St. Marys Cement (“St. Marys”) 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 August 16, 2023, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) proposed penalties in the amount of \$85,461 against St. Marys. On August 30, 2023, the operator filed a timely contest of the citations. The Secretary subsequently filed a Petition for Assessment of Penalty.

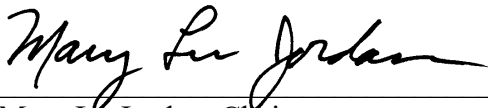
On January 3, 2024, the Secretary filed a motion to approve a settlement agreement involving of all of the citations listed in the proposed assessment. On January 4, 2024, a Commission Administrative Law Judge issued an order, granting the settlement motion, reducing the penalties assessed against St. Marys from \$85,461 to \$67,025, and ordering the operator to pay \$67,025 within 30 days. On March 21, 2024, MSHA sent the operator a delinquency notice seeking payment of \$67,025. On March 29, 2024, MSHA received the amount of \$67,025 from the operator.

St. Marys filed a motion seeking to reopen the penalties explaining in part that it discovered the delinquency on March 7, 2024, when reviewing the public Data Retrieval System

maintained by MSHA. The Secretary states that St. Marys' motion is moot since the penalties have been paid.

Although St. Marys has moved to reopen this case, the record is clear that the proposed penalty assessment was timely contested. The Secretary filed its petition with the Commission, the case was assigned to an Administrative Law Judge, and the parties negotiated a good faith settlement.¹ St. Marys has not identified any mistakes or other deficiencies with the settlement warranting reopening.

Accordingly, the operator's motion to reopen is moot. *See Olmos Contracting I, LLC*, 39 FMSHRC 2015, 2019 (Nov. 2017). The ALJ's January 4, 2024 Order remains final.



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

¹ We note that the associated civil penalties were paid in full. In the context of a settlement agreement, this appears to have been an intentional act on the part of St. Marys, not a mistake.

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