

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

December 20, 2024

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

ST. MARYS CEMENT U.S. LLC

Docket No. LAKE 2025-0084¹
A.C. No. 20-00038-592622

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 April 19, 2024, the Commission received from St. Marys Cement U.S. LLC (“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 January 22, 2024, St. Marys received a proposed penalty assessment, No. 000592622, from the Secretary of Labor. On February 12, 2024, a penalty contest was filed and docketed under LAKE 2024-0105. On April 8, 2024, MSHA sent the operator a delinquency notice related to Assessment No. 000592622.

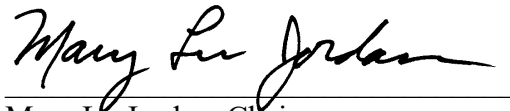
St. Marys filed a motion seeking to reopen the penalties that were the subject of the delinquency notice. St. Marys explained that it intended to contest all of the citations listed on the proposed penalty assessment, but that it had inadvertently failed to check boxes on page 4 of the penalty assessment form indicating its intent to contest those citations.

¹ The Secretary of Labor noted that the motion to reopen was erroneously filed under the existing docket number assigned to the timely contested civil penalties rather than being assigned a separate civil penalty proceeding docket number. We have corrected this docketing oversight, and the correct docket number appears in the caption of this order.

The Secretary does not oppose St. Marys' motion. The Secretary notes that the proposed assessment form allows an operator to contest penalties in two ways: by checking a box next to each individual penalty it wishes to contest, or by checking a box at the bottom of the form indicating, "I wish to contest and have a formal hearing on all violations listed in the Proposed Assessment(s)." S. Resp. at 2 (quoting Attach. A). When St. Marys submitted the form to MSHA, page four of the penalties was not checked. However, St. Marys had also checked the box indicating that it intended to contest all of the penalties.

Having reviewed St. Marys' request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator "fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission." 30 U.S.C. § 815(a). Here, St. Marys timely notified the Secretary of the contest. This obviates any need to invoke Rule 60(b).

Accordingly, the operator's motion to reopen is moot, and this case is remanded 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 2700.²



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

² We note that the Secretary filed a motion to approve settlement pertaining to LAKE 2024-0105, which is pending before the Judge.

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