

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

APR 28 2016

SECRETARY OF LABOR,	:	Docket Nos.	KENT 2016-3
MINE SAFETY AND HEALTH	:		KENT 2016-4
ADMINISTRATION (MSHA),	:		KENT 2016-5
	:		KENT 2016-6
v.	:		LAKE 2016-9-M
	:		WEST 2016-6-M
BLUE DIAMOND COAL COMPANY, et	:		CENT 2015-625-M
al. ¹	:		CENT 2016-7-M
	:		LAKE 2016-7-M
	:		VA 2016-7
	:		WEST 2015-967
	:		LAKE 2016-35

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). Between September 15 and October 14, 2015, the Commission received motions from the above-captioned operators seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).


In each of these cases, the operators claim that they mailed timely notices of contest to the Arlington office of the Mine Safety and Health Administration (“MSHA”). The Secretary initially did not oppose reopening because of problems concerning mail delivery following the relocation of MSHA’s headquarters on July 15, 2015. However, on October 14, 2015, MSHA received a large volume of mail that had not been forwarded to MSHA’s new address. Included in this mail were the notices of contest for the above-captioned cases.

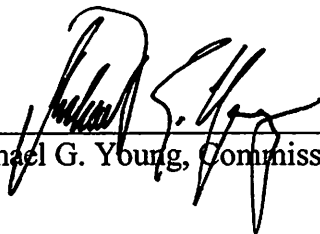
Having discovered that the operators had timely contested the proposed penalties, MSHA maintains that the contests were immediately processed and docketed in separate civil penalty

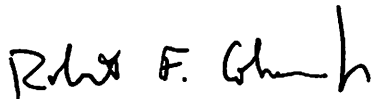
¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers KENT 2016-3, KENT 2016-4, KENT 2016-5, KENT 2016-6, LAKE 2016-9-M, WEST 2016-6-M, CENT 2015-625-M, CENT 2016-7-M, LAKE 2016-7-M, VA 2016-7, WEST 2015-967, and LAKE 2016-35 involving similar procedural issues. 29 C.F.R. § 2700.12. For the sake of brevity, the relevant operator’s names, A.C. numbers, and associated docket numbers have been listed in Appendix A, attached to this order.


proceedings. Based on these circumstances, the Secretary requests that the above-captioned dockets be dismissed as moot.

Having reviewed the requests to reopen and the Secretary's response, we conclude that the proposed penalty assessments did not become final orders of the Commission because the operators timely contested the proposed assessments. 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, the operators notified the Secretary of the contests. This obviates any need to invoke Rule 60(b) of the Federal Rules of Civil Procedure. Accordingly, the operators' motions to reopen are moot, and these dockets are dismissed.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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Exhibit 1

Operator	Docket Number	A.C. Number
Blue Diamond Coal Company	KENT 2016-3	15-19598-384070
Blue Diamond Coal Company	KENT 2016-4	15-17478-384056
Blue Diamond Coal Company	KENT 2016-5	15-17497-384057
Blue Diamond Coal Company	KENT 2016-6	15-17497-384768
Callender Construction Company, Inc.	LAKE 2016-9-M	11-00214-385554
Campbell Redi-Mix	WEST 2016-6-M	02-03022-386154
Gates Construction Inc.	CENT 2015-625-M	32-01050-382708
Mears Sand & Gravel, LLC	CENT 2016-7-M	16-00883-382655
Mel Flannery Trucking	LAKE 2016-7-M	47-03029-384752
RDM Enterprises, Inc.	VA 2016-7	44-06929-385047-S889
Signal Peak Energy, LLC	WEST 2015-967	24-01950-384634
Triad Underground Mining, LLC	LAKE 2016-35	12-02423-384766