

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

MAY 18 2015

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

v. :

Docket No. WEST 2014-169-M
A.C. No. 04-00743-333178-V7D

PETRO CHEMICAL INSULATION, INC. :

BEFORE: Jordan, Chairman; Young, Nakamura, and Althen, Commissioners¹

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 December 23, 2013, the Commission received from Petro Chemical Insulation, Inc. (“Petro”) 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).

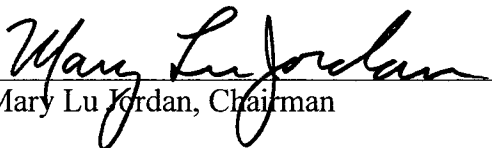
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that on October 1, 2013, Petro received a proposed penalty assessment from the Secretary. On October 31, 2013, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

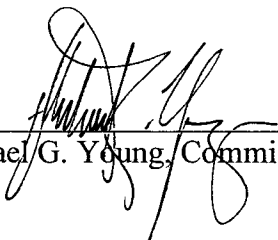
Petro asserts that it submitted a letter requesting a conference on October 10, 2013, and made numerous attempts to follow up with MSHA on the case. Petro offers a UPS delivery report for the attempted delivery of the contest form. The Secretary does not oppose the request to reopen and notes that the contest was returned undelivered due to the Federal government shutdown that occurred from October 1 – 16, 2013.

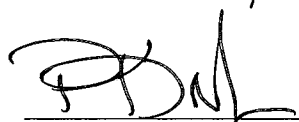
Having reviewed Petro’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Accordingly, the operator’s motion to reopen is moot, and this case is remanded to the Chief Administrative Law Judge for further

¹ Commissioner Cohen has elected not to participate in this matter.

proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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