

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

WASHINGTON, DC 20004-1710

MAY 24 2018

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

v.

V-TECH SAND, LLC

:
: Docket No. CENT 2016-293-M
: A.C. No. 03-02013-368839
:
: Docket No. CENT 2016-294-M
: A.C. No. 03-02013-371413
:

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

ORDER

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On April 12, 2016, the Commission received from V-Tech Sand, LLC (“V-Tech”) two motions seeking to reopen two penalty assessments.¹

The Commissioners are evenly divided on the disposition of this matter. Acting Chairman Althen and Commissioner Young would hold that there is no final order and therefore the operator’s motions are unnecessary. They would permit the operator to contest the penalties before the Judge. Commissioners Jordan and Cohen would hold that the proposed penalties did become final orders pursuant to section 105(a) of the Mine Act, and that the motions to reopen were untimely filed. They would deny the motions.

Because the Commission is evenly divided, there is not a majority voting to grant the motions to reopen. The Secretary has administratively determined that final orders have been issued. The Commission’s order here leaves that determination undisturbed. *See Pa. Elec. Co.*, 12 FMSHRC 1562, 1563-65 (Aug. 1990), *aff’d on other grounds*, 969 F.2d 1501 (3d Cir. 1992)

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers CENT 2016-293-M and CENT 2016-294-M involving similar procedural issues. 29 C.F.R. § 2700.12.

(providing that the effect of a split Commission decision is to leave standing disposition from which appeal has been sought).



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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