

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

WASHINGTON, DC 20004-1710

**JUL 14 2016**

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

v.

WHITE OAK RESOURCES, LLC,

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Docket No. LAKE 2015-532  
A.C. No. 11-03203-374211

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

**ORDER**

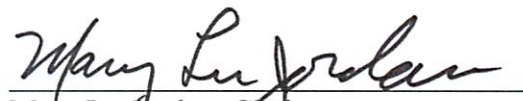
BY THE COMMISSION:


This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On June 3, 2015, the Commission received from White Oak Resources, LLC (“White Oak”) 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).

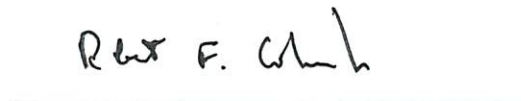
On March 6, 2015, White Oak received a proposed penalty assessment from the Secretary. On April 6, 2015, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

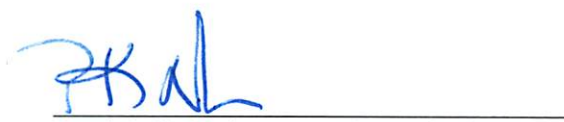
White Oak asserts that it timely contested the penalty assessment at issue. The Secretary does not oppose the request to reopen, and admits that it received a timely contest of the penalty assessment at issue on March 12, 2015.


Having reviewed White Oak'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. 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, White Oak 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.

  
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Mary Lu Jordan, Chairman

  
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Michael G. Young, Commissioner

  
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Robert F. Cohen Jr., Commissioner

  
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Patrick K. Nakamura, Commissioner

  
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William I. Althen, Commissioner

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