

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**July 31, 2024**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. CENT 2023-0072
	:	CENT 2023-0073
v.	:	CENT 2023-0074
	:	CENT 2023-0075
MORTON SALT, INC.	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, 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 October 2, 2023, the Commission granted sua sponte review in the subject contest proceedings of the Judge’s decision issued on August 31, 2023. The contest proceedings involve Order Nos. 9674876, 9674877, 9674883, and 9674887.

On May 16, 2024, the Commission issued an order denying with prejudice a motion to reopen filed by Morton Salt, Inc, in Docket No. CENT 2023-0248. 45 FMSHRC \_\_\_, No. CENT 2023-0248 (May 16, 2024). In the denial, the Commission declined to reopen proposed penalty assessments that had become final Commission orders pursuant to section 105(a) of the Mine Act, 30 U.S.C. 815(a). The proposed penalties that became final Commission orders include those associated with Order Nos. 9674876, 9674877, 9674883, and 9674887.

On June 3, 2024, the Secretary of Labor filed a letter, pursuant to Fed. R. App. P. 28(j),<sup>1</sup> to bring pertinent authority to the Commission’s attention in this matter. The Secretary noted that the Commission denied with prejudice Morton Salt’s motion to reopen in Docket No. CENT 2023-0248, which involved penalties associated with the orders that are at issue in the subject contest proceedings. The Secretary states that the Commission’s order in CENT 2023-0248 moots the subject contest proceedings.

On June 21, 2024, the Commission issued an order directing Morton Salt, within 30 days, to show why the subject contest proceedings, Docket Nos. CENT 2023-0072 through CENT

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<sup>1</sup> Fed. R. App. P. 28(j) provides in part that “[i]f pertinent and significant authorities come to a party’s attention after the party’s brief has been filed – or after oral argument but before decision – a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations.”

2023-0075, should not be dismissed as moot. Morton Salt has not submitted a response to that Order.

Although Morton timely filed contests of Order Nos. 9674876, 9674877, 9674883, and 9674887, it was required to file a timely contest of the proposed penalties associated with those orders to contest the penalties. 29 C.F.R. § 2700.26(a) (“A person who wishes to contest a proposed penalty assessment must provide such notification regardless of whether the person has previously contested the underlying citation or order pursuant to § 2700.20.”); 29 C.F.R. § 2700.21(a) (“The filing of a notice of contest of a citation or order issued . . . does not constitute a challenge to a proposed penalty assessment that may subsequently be issued by the Secretary . . . which is based on that citation or order.”).

Morton failed to timely contest the proposed penalties associated with Order Nos. 9674876, 9674877, 9674883, and 9674887, and the penalties became final pursuant to section 105(a) of the Mine Act. The Commission determined that the reason for the operator’s failure to timely contest the proposed penalties was insufficient to justify reopening, and the Commission denied with prejudice Morton’s motion to reopen. Morton did not appeal the Commission’s denial, and the Commission’s order became final 30 days after its issuance. 30 U.S.C. § 816(a).

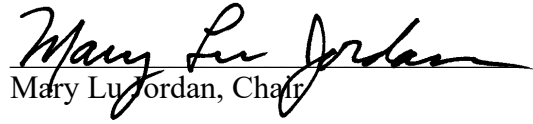
The Commission has recognized that a “case is moot when the issues presented no longer exist or the parties no longer have a legally cognizable interest in the outcome.” *North American Drillers, LLC*, 34 FMSHRC 352, 358 (Feb. 2012) (citation omitted). Similarly, the D.C. Circuit has stated that it “cannot decide a case if ‘events have so transpired that the decision will neither presently affect the parties’ rights nor have a more-than speculative chance of affecting them in the future.’” *Sec’y of Labor v. M-Class Mining, LLC*, 1 F.4th 16, 21 (D.C. Cir. 2021) (citations omitted).

The issues presented in the subject contest proceedings are moot given that the penalties associated with the contested orders are final orders and “the assertion of violation[s] contained in the [orders are] regarded as true.” *Old Ben Coal Co.*, 7 FMSHRC 205, 209 (Feb. 1985).<sup>2</sup> Because the allegations of violation are regarded as true, the operator has no legally cognizable interest in the outcome of its contest of the orders.

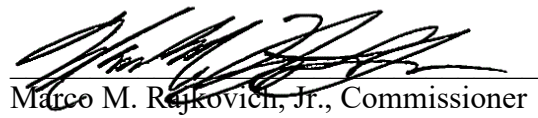
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<sup>2</sup> Commissioners Althen and Marvit note fundamental problems with the holding of *Old Ben* and relevant portions of Commission Rules 21 and 26. Where there is a conflict between the Mine Act and Commission precedent or rules, the clear language of the Mine Act must prevail.

Accordingly, we hereby dismiss these contest proceedings as moot.

  
Mary Lu Jordan, Chair

  
William I. Althen, Commissioner

  
Marco M. Rajkovich, Jr., Commissioner

  
Timothy J. Baker, Commissioner

  
Moshe Z. Marvit, Commissioner

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