

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

WASHINGTON, DC 20004-1710

**AUG 07 2017**

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

v.

BROOKFIELD SAND & GRAVEL, INC.

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Docket No. LAKE 2016-253-M  
A.C. No. 12-02240-396032

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 April 8, 2016, the Commission received from Brookfield Sand and Gravel, Inc. (“Brookfield”) a motion seeking to reopen a penalty assessment that the Secretary asserted had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On November 16, 2015, Brookfield received a proposed penalty assessment from the Secretary. Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate the operator mailed its contest on December 16, 2015. This was a timely response. *See* 30 U.S.C. § 815(a) (operator has 30 days within which to notify Secretary it intends to contest citation or penalty); (29 C.F.R. § 2700.8 (Computation of 30 days excludes day from which obligation to respond begins to run)).<sup>1</sup> We therefore conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested it.

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<sup>1</sup> Computation would be the same under the Federal Rules of Civil Procedure. *See* FRCP 6(a)(1)(A) (Computation excludes day of the event that triggers the period).

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.



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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