

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

August 30, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2023-0232
v.	:	A.C. No. 38-00085-579929
	:	
SPECIALTY VERMICULITE,	:	
LLC	:	

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 August 8, 2023, the Commission received from Specialty Vermiculite, LLC (“Specialty Vermiculite”) 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 July 5, 2023, Specialty Vermiculite received a proposed penalty assessment from the Secretary. On August 4, 2023, 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.


Specialty Vermiculite asserts that it timely contested the proposed assessment. According to the operator, the contest of four citations was filed on August 4, 2023, but the Mine Safety and Health Administration’s (MSHA) Assessments Office deemed it untimely due to the U.S. Post Office’s delivery receipt date of the proposed assessment as July 1, 2023. Specialty Vermiculite argues the contest was timely and there was miscommunication regarding the delivery. After careful review, MSHA corrected the date of delivery of the proposed assessment to July 5, 2023. The Secretary does not oppose the request to reopen, but argues that because the contest was timely, the Commission should deny this motion to reopen as moot and remand for further proceedings.

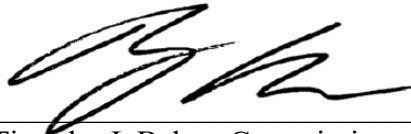
Having reviewed Specialty Vermiculite’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator “fails to notify the Secretary 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, Specialty Vermiculite 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.


Mary Lu Jordan, Chair


William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner


Timothy J. Baker, Commissioner


Moshe Z. Marvit, Commissioner

Distribution:

R. Henry Moore, Esq.
Fisher & Phillips LLP
Six PPG Place, Suite 830
Pittsburgh, PA 15222
hmoore@fisherphillips.com

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
scott.emily.t@dol.gov

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov