

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW  
SUITE 9500  
WASHINGTON, DC 20001

July 31, 2009

SECRETARY OF LABOR,	:	Docket No. KENT 2009-1128
MINE SAFETY AND HEALTH	:	A.C. No. 15-15138-171766
ADMINISTRATION (MSHA)	:	
	:	Docket No. KENT 2009-1129
v.	:	A.C. No. 15-18250-171772
	:	
McCOY ELKHORN COAL CORP.	:	Docket No. KENT 2009-1130
	:	A.C. No. 15-18721-171781
	:	
	:	Docket No. KENT 2009-1131
	:	A.C. No. 15-18775-171784

BEFORE: Duffy, 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. (2006) (“Mine Act”). On May 26, 2009, the Commission received requests to reopen four penalty assessments issued to McCoy Elkhorn Coal Corporation (“McCoy”) that may have become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).<sup>1</sup>

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

McCoy states that it never received Proposed Assessment Nos. 000171766, 000171772, 000171781 and 000171784. The Secretary states that Federal Express attempted delivery without success on December 26, 2008, for all four proposed assessments. She suggests that it is

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<sup>1</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2009-1128, KENT 2009-1129, KENT 2009-1130, and KENT 2009-1131, all captioned *McCoy Elkhorn Coal Corp.*, and involving the same factual and procedural issues. 29 C.F.R. § 2700.12.

possible that the mine offices were closed for the holidays. The Secretary submits that in order to achieve proper service, she will re-serve the proposed assessments by Federal Express at the address of record, and that McCoy will then have 30 days after receipt to either pay or contest the proposed assessments.

Having reviewed McCoy's requests and the Secretary's response, we deny McCoy's requests to reopen as moot. The Secretary may proceed as she has outlined in her response, and, if any of the proposed penalties are contested by McCoy, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. *See Lehigh Cement Co.*, 28 FMSHRC 440, 441 (July 2006).

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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