

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

March 4, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2009-125-M
v.	:	A.C. No. 08-01215-131854
	:	
ROWAN CONSTRUCTION COMPANY	:	

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 November 14, 2008, the Commission received from Rowan Construction Company (“Rowan”) a motion by counsel to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

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).

The Secretary states that she does not oppose the reopening of the proposed penalty assessment.

Here, the proposed assessment was delivered to Rowan’s building, but another tenant at that location accepted delivery of the assessment. Sometime later, the tenant gave the assessment to Rowan. Thereafter, Rowan timely notified the Secretary of its intent to contest the assessment.<sup>1</sup>

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<sup>1</sup> The facts concerning the delivery of the assessment to Rowan, which are stated in an affidavit, are unopposed by the Secretary and accepted as stated for the limited purpose of considering the motion.

Accordingly, the proposed penalty assessment is not a final order of the Commission, and Rowan's motion is moot. We remand this matter to the Chief Administrative Law Judge for assignment to a judge. This case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. *See State of Alaska Dep't of Transp. and Pub. Facilities*, 29 FMSHRC 389, 390 (June 2007). Consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

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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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