

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

February 7, 2011

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2009-812
v.	:	A.C. No. 01-00851-183518
	:	
OAK GROVE RESOURCES LLC	:	

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, 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 January 26, 2011, the Commission received from Oak Grove Resources LLC (“Oak Grove”) a motion by counsel to permit late filing of a renewed motion 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).

On October 28, 2010, the Commission denied without prejudice Oak Grove’s prior motion to reopen the subject penalty assessment. *Oak Grove Res., LLC*, 32 FMSHRC 1253, 1254 (Oct. 2010). The Commission instructed that, if Oak Grove sought reopening again, “it must do so within 30 days.” *Id.* Oak Grove waited nearly 90 days to bring its renewed motion to reopen, contrary to the Commission’s explicit instruction.

Because Oak Grove failed to timely file its second motion to reopen for failing to file a timely contest of the penalty assessment, we deny the motion to permit late filing and deny the motion to reopen the penalty assessment.

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Mary Lu Jordan, Chairman

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Michael F. Duffy, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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Patrick K. Nakamura, Commissioner

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