

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

April 26, 2010

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. VA 2009-378
v.	:	A.C. No. 44-07211-185244
	:	
CEDAR CREEK COAL, LLC	:	

BEFORE: Jordan, Chairman; Duffy, 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 July 30, 2009, the Commission received from Cedar Creek Coal, LLC (“Cedar Creek”) a letter seeking to reopen a penalty assessment that may have 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).

On May 12, 2009, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Penalty Assessment No. 000185244 to Cedar Creek. The record indicates that Federal Express was unable to deliver the proposed penalty assessment. Although Federal Express indicates that the reason for non-delivery was an incorrect address, the operator claims that the assessment was addressed correctly. The Secretary states that she does not oppose the reopening of the proposed penalty assessment. She notes that the operator should ensure that its address of record is accurate for future penalty assessments.

The record indicates that Cedar Creek never received notification of the proposed penalty assessment as required under Commission Procedural Rule 25.¹ Under the circumstances of this case, we conclude that Cedar Creek was not notified of the penalty assessment, within the meaning of the Commission's Procedural Rules, and the proposed penalty assessment has not become a final order of the Commission. We also conclude that Cedar Creek has received a copy of the proposed penalty assessment since it is attached to the request to reopen.

¹ Commission Procedural Rule 25 states that the "Secretary, by certified mail, shall notify the operator or any other person against whom a penalty is proposed of the violation alleged, the amount of the proposed penalty assessment, and that such person shall have 30 days to notify the Secretary that he wishes to contest the proposed penalty assessment." 29 C.F.R. § 2700.25.

Because the proposed penalty assessment did not become a final order of the Commission, we will treat the request to reopen as moot. We hereby remand this matter 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. If the operator has not already done so, it should submit the proposed assessment form to MSHA, within 30 days of the date of this order. *See* 29 C.F.R. § 2700.26.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Distribution:

Mr. Danny Justus
Cedar Creek Coal, LLC
37 Smith Rd.
Phelps, KY 41553

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., Room 2220
Arlington, VA 22209-2296

Myra James, Chief
Office of Civil Penalty Compliance
MSHA
U.S. Dept. of Labor
1100 Wilson Blvd., 25th Floor
Arlington, VA 22209-3939

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021