

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

May 02, 2014

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

HR WAGSTAFF COMPANY, INC.

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Docket No. WEST 2013-619-M
A.C. No. 42-01665-298804 B108

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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. (2012) (“Mine Act”). On March 28, 2013, the Commission received from HR Wagstaff Company, Inc. (“Wagstaff”) a motion seeking to reopen a penalty assessment that had apparently become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

Wagstaff asserts that it never received the proposed assessment or delinquency notice because they were not mailed to Wagstaff’s address of record in Utah. Wagstaff submits that its Contractor ID Form was updated in 2001 with the Utah address, and that it had never been associated with the Colorado address.² The Secretary notified the Commission that he has discovered an error in the posting of the Contractor ID and wishes to withdraw his opposition to the motion to reopen.

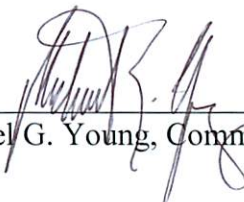
¹ Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

² In its response, Wagstaff also requested to be awarded attorneys’ fees under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1). This matter falls outside the scope of our review of Wagstaff’s motion to reopen, and we thus do not reach it. *See Tide Creek Rock, Inc.*, 24 FMSHRC 428, 429 n.1 (May 2002). If the operator wishes to apply for attorneys’ fees in conformity with the procedural and substantive requirements of the Equal Access to Justice Act, it may do so before the Administrative Law Judge.

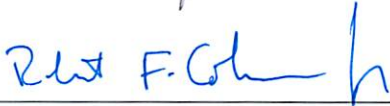
Having reviewed Wagstaff's request and the Secretary's response, we conclude that the above-captioned assessment has not become a final order of the Commission because it was never received by Wagstaff. Accordingly, we deny the request to reopen as moot and remand this matter to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, 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.




Mary Lu Jordan, Chairman



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner



Patrick K. Nakamura, Commissioner



William I. Althen, Commissioner

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