

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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WASHINGTON, DC 20001

May 14, 2009

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

v.

HANCOCK MATERIALS, INC.

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Docket No. WEST 2009-423-M
A.C. No. 42-01122-150148

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners¹

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 22, 2009, the Commission received a letter seeking to reopen a penalty assessment issued to Hancock Materials, Inc. (“Hancock”) 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).

Hancock seeks reopening on the grounds that it became aware of Proposed Assessment No. 000150148 more than 30 days after it had been issued, at a time when the operator was no longer in business. The Secretary of Labor confirms that Hancock was no longer in business when the proposed assessment was mailed and further states that the proposed assessment was returned to the Department of Labor’s Mine Safety and Health Administration (“MSHA”) as undelivered. She submits that because service of the proposed assessment was not achieved, the assessment did not become a valid final order. The Secretary states that she will mail the

¹ Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 823(c), the Commission has delegated the power to rule on this reopening request to a three-member panel.

proposed assessment to the address provided by Hancock, and Hancock will then have 30 days after receipt to either pay the proposed assessment or contest it.

Having reviewed Hancock's request and the Secretary's response, we deny Hancock's motion as moot. The Secretary may mail the proposed assessment to Hancock at the address provided in this proceeding, and this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.² *See Lehigh Cement Co.*, 28 FMSHRC 440, 441 (July 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

² It appears that the Secretary has determined that the manner in which MSHA attempted service in this case was insufficient. MSHA permits operators to provide addresses other than the operator's official address for service. 30 C.F.R. § 41.30. Accordingly, the Secretary may mail the proposed assessment to the address provided by the operator in this proceeding in order to achieve service.

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