

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

July 9, 2009

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|------------------------|---|--------------------------|
| SECRETARY OF LABOR,    | : |                          |
| MINE SAFETY AND HEALTH | : | Docket No. WEVA 2009-1   |
| ADMINISTRATION (MSHA)  | : | A.C. No. 46-09136-156167 |
|                        | : |                          |
| v.                     | : | Docket No. WEVA 2009-358 |
|                        | : | A.C. No. 46-09136-159271 |
| BIG RIVER MINING, LLC  | : |                          |

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”). In these now consolidated proceedings, the Commission denied without prejudice motions that had been filed by Big River Mining, LLC (“Big River”) to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). *Big River Mining, LLC*, 31 FMSHRC 396 (Apr. 2009). On April 27, 2009, the Commission received a renewed and amended motion by counsel for Big River seeking to reopen the assessments.

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).

Big River’s original motions included affidavits from its safety director, who assumed that position in August 2008, stating that he had spoken with his predecessor about, and searched the office files for, any proposed penalty assessments from the Department of Labor’s Mine Safety and Health Administration (“MSHA”). Nevertheless, he states that he did not learn of the two assessments involved here, which had been issued in the preceding weeks, until he later saw that they were delinquent according to MSHA’s public database.

The Commission denied the original requests to reopen because of Big River’s failure to specify the individual proposed penalties in each of the assessments it intended to contest upon

reopening. 31 FMSHRC at 397-98. Big River's renewed motion now includes copies of each assessment marked to indicate which penalties and related citations and orders Big River would contest if the assessments are reopened, as well as a statement that those penalties that it does not intend to contest have been paid.

Having reviewed Big River's motions and the Secretary's response, in the interests of justice, we hereby reopen this matter and remand it 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.

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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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