

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

April 27, 2010

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2010-590
v.	:	A.C. No. 46-08759-199280
	:	
NEWTOWN ENERGY, INC.	:	

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 February 2, 2010, the Commission received from Newtown Energy, Inc. (“Newtown”) a motion 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 October 2, 2009, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000199280 to Newtown, proposing a penalty for a citation that had been previously issued to the operator. According to both Newtown and the Secretary, the assessment was addressed to the correct location, but was returned undelivered to the Secretary, with no further explanation provided by Federal Express. Newtown states that it learned of the assessment when it checked the MSHA web site or around January 20, 2010, and that it never received a delinquency notice from MSHA. The Secretary does not oppose reopening, but notes that MSHA sent a delinquency notice to the address of record dated January 5, 2010.

Having reviewed Newtown's request and the Secretary's response, we conclude that Assessment No. 000199280 has not become a final order of the Commission because it was never received by Newtown. 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. 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.<sup>1</sup>

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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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<sup>1</sup> It appears that the operator is having difficulty receiving packages and correspondence from MSHA. It is incumbent upon the operator to work with MSHA to solve this problem.

Distribution:

Christopher D. Pence, Esq.  
Allen, Guthrie, & Thomas, PLLC  
500 Lee Street, East, Suite 800  
P.O. Box 3394  
Charleston, WV 25333

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., 25<sup>th</sup> 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