

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

August 24, 2010

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

v.

BLUE HAVEN ENERGY, INC.

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Docket No. WEVA 2010-904  
A.C. No. 46-08581-208515

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, 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 April 19, 2010, the Commission received from Blue Haven Energy, Inc. (“Blue Haven”) 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 January 12, 2010, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000208515 to Blue Haven, proposing penalties for two citations that had been previously issued to the operator. According to the Secretary, because of a problem with Federal Express delivery, the assessment was never received by Blue Haven and was returned undelivered. Blue Haven states that it learned of the assessment when it checked the MSHA web site sometime in March 2010. The Secretary does not oppose reopening.

Having reviewed Blue Haven’s request and the Secretary’s response, we conclude that Assessment No. 000208515 has not become a final order of the Commission because it was never received by Blue Haven. Accordingly, we find the request to reopen to be 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.

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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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Patrick K. Nakamura, Commissioner

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