

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

January 6, 2011

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH : Docket No. YORK 2010-239-M  
ADMINISTRATION (MSHA) : A.C. No. 30-02994-206555  
 :  
v. : Docket No. YORK 2010-240-M  
 : A.C. No. 30-02994-211798  
BROWN EXCAVATION COMPANY, INC. :

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) (“Mine Act”).<sup>1</sup> On May 4, 2010, the Commission received from Brown Excavation Company (“Brown”) a letter seeking 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).<sup>2</sup> On May 26, 2010, the Secretary of Labor filed oppositions to the operator’s request to reopen.

It appears from a review of the Data Retrieval System maintained by the Department of Labor’s Mine Safety and Health Administration (“MSHA”) that the operator has paid the civil penalties that are the subject of its request to reopen. The parties have not filed pleadings subsequent to the May 2010 pleadings to inform the Commission of any change in status of these proceedings.

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<sup>1</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers YORK 2010-239-M and YORK 2010-240-M, both captioned *Brown Excavation Company, Inc.*, and involving the same procedural issues. 29 C.F.R. § 2700.12.

<sup>2</sup> 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).

Brown is hereby ordered to show cause within 30 days of the date of this order why its request to reopen should not be denied as moot.

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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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