

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

March 14, 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
BROWN EXCAVATION COMPANY, INC.	:	A.C. No. 30-02994-211798

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”). 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).¹ On May 26, 2010, the Secretary of Labor filed oppositions to the operator’s request to reopen.

On January 6, 2011, we issued an order directing Brown to show cause within 30 days of the date of the order why its request to reopen should not be denied as moot. We noted that a review of the Data Retrieval System maintained by the Department of Labor’s Mine Safety and Health Administration (“MSHA”) revealed that the operator has paid the civil penalties that are the subject of its request to reopen.

¹ 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 has filed no response to the show cause order. Accordingly, we deny Brown's request to reopen as moot.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Patrick K. Nakamura, Commissioner

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