

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

May 20, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. CENT 2008-412-M
	:	A.C. No. 14-00894-118141
v.	:	
	:	Docket No. CENT 2008-413-M
KAW VALLEY SAND & GRAVEL, INC.	:	A.C. No. 14-01667-118250

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. (2000) (“Mine Act”).¹ On March 20, 2008, the Commission received from Kaw Valley Sand and Gravel, Inc. (“Kaw Valley”) a letter seeking to reopen two penalty assessments that may have become final orders 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).

Kaw Valley states that, on June 5, 2007, it submitted contests of two penalty assessments that had been issued by the Department of Labor’s Mine Safety and Health Administration (“MSHA”). The proposed penalty assessments were apparently issued to Kaw Valley on May 16, 2007. With its request for relief, Kaw Valley submitted a Federal Express tracking

¹ Pursuant to Commission Procedural Rule 12, 29 C.F.R. § 2700.12, on our own motion, we hereby consolidate Docket Nos. CENT 2008-412-M and CENT 2008-413-M, as both dockets involve similar procedural issues and similar factual backgrounds.

receipt that indicates that the contests were delivered on June 6 to MSHA's Arlington, Virginia office. Kaw Valley also states that it has been receiving unwarranted collection calls. In response, the Secretary concedes that the contests were delivered to MSHA and signed for by an MSHA employee; however, the Secretary further states that MSHA's Civil Penalty Compliance Office has no record of having actually received the contest documents.

Having reviewed Kaw Valley's request and the Secretary's response, we conclude that the proposed assessments at issue have not become final orders of the Commission because Kaw Valley timely contested them. We deny Kaw Valley's motion as moot and remand this matter to the Chief Administrative Law Judge for further proceedings as appropriate pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. *See Lehigh Cement Co.*, 28 FMSHRC 440, 441 (July 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Distribution:

Alan R. Teutemacher
Safety Director
Kaw Valley Companies, Inc.
5600 Kansas Ave.
Kansas City, KS 66106

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
U.S. Department of Labor
1100 Wilson Blvd., 25th 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