

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

May 28, 1995

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

v.

GENERAL CHEMICAL CORPORATION

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: Docket Nos. WEST 95-95-M  
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: WEST 95-112-M  
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: WEST 94-583-RM through  
:  
: WEST 94-591-RM

BEFORE: Jordan, Chairman; Holen, Marks and Riley, Commissioners

ORDER

BY THE COMMISSION:

These civil penalty and contest proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994). In June and July 1994, the Secretary of Labor issued nine citations to General Chemical Corporation (“General Chemical”) alleging insubstantial stoppings in violation of 30 C.F.R. § 57.22218(a) (1995) and a citation alleging a failure to report an accident in violation of 30 C.F.R. § 50.10 (Citation No. 4338810). In August 1994, General Chemical filed notices of contest for all the citations except Citation No. 4338810. The nine citations became the subject of contest and civil penalty proceedings, while Citation No. 4338810 became the subject of only a civil penalty proceeding. On November 29, 1995, the Secretary filed a motion to vacate the civil penalty and contest proceedings. On December 12, 1995, Administrative Law Judge August Cetti issued an Order of Dismissal.

On March 18, 1996, the Commission received an Unopposed Motion for Amended Order of Dismissal from General Chemical. General Chemical states that, although Citation No. 4338810 was part of the civil penalty proceeding that was dismissed, it was not specifically referenced in the dismissal order. Mot. at 3. It asserts that confusion may exist as to whether the dismissal order includes Citation No. 4338810. *Id.* at 2. It therefore requests that an amended dismissal order be issued, specifically referencing Citation No. 4338810. *Id.* at 3.

The judge’s jurisdiction over this case terminated when his dismissal order was issued on December 12, 1995. 29 C.F.R. § 2700.69(b) (1995). Relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of

a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). General Chemical's motion was received by the Commission on March 18, after the judge's dismissal order had become a final decision of the Commission. Under these circumstances, we shall treat General Chemical's motion as a late-filed petition for discretionary review requesting amendment of a final Commission decision. *See Transit Mixed Concrete Co.*, 13 FMSHRC 175, 176 (February 1991).

A final Commission judgment or order may be reopened under Fed. R. Civ. P. 60(b)(1) & (6) in circumstances such as mistake, inadvertence, excusable neglect, or other reasons justifying relief. 29 C.F.R. § 2700.1(b) (Federal Rules of Civil Procedure apply "so far as practicable" in the absence of applicable Commission rules); *e.g.*, *Lloyd Logging, Inc.*, 13 FMSHRC 781, 782 (May 1991). The judge did not directly refer to Citation No. 4338810 in the caption or the body of the dismissal order. General Chemical asks that the order be amended to specifically reference Citation No. 4338810. The Secretary does not oppose the motion. Accordingly, we reopen these proceedings, grant the motion, and issue an Amended Order of Dismissal. *See Martin Marietta Aggregates*, 16 FMSHRC 189, 190 (February 1994).

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Mary Lu Jordan, Chairman

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Arlene Holen, Commissioner

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner