

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 4, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 2006-265-M
	:	A.C. No. 10-01937-11058
v.	:	
	:	
D. BLOSCH CRUSHING, INC.	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, 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”). On March 6, 2006, the Commission received a letter from a mine safety consultant to D. Blosch Crushing, Inc. (“Blosch Crushing”) requesting that the Commission reopen a penalty assessment that purportedly became 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 October 15, 2003, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) sent to Blosch Crushing the proposed penalty assessment at issue. The company asserts that it attempted to contest the proposed assessment in a letter to MSHA dated November 20, 2003, a copy of which the company included with its request to reopen. This letter is addressed to an MSHA Pittsburgh Post Office Box that is listed on the proposed assessment form used by MSHA as the address to which payments are sent. In a response to Blosch Crushing’s request to reopen, the Secretary states: “MSHA has no record of receiving this letter, but does not question that the letter was sent as indicated.” The Secretary also states that she does not oppose Blosch Crushing’s request for relief.

Although the record contains no indication as to when the company received the proposed penalty assessment at issue, the Commission inadvertently obtained information through its docket office that Blosch may have received the assessment on October 27, 2003. We are unable to evaluate the reliability of this information. However, the Secretary does not dispute Blosch's statement that it mailed a letter contesting the assessment to MSHA on November 20, 2003, nor does the Secretary oppose Blosch's motion to reopen the penalty assessment. Using these dates, the assessment would never have become a final Commission order and further proceedings would be appropriate. *See* 30 U.S.C. § 815(a) ("If, within 30 days from the *receipt* of the [penalty] notification . . . the operator fails to notify the Secretary that he intends to contest . . . the proposed assessment of penalty . . . [it] shall be deemed a final order of the Commission") (emphasis added).

Having reviewed Blosch Crushing's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge. If it is determined the company filed a timely contest with MSHA, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Kim Redding, Consultant
N-Compliance Safety Services, Inc.
P.O. Box 8817
Lacey, WA 98509-8817

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor West
Arlington, VA 22209-2247

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