

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW  
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July 12, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2007-450-M
v.	:	A.C. No. 02-00152-108938 K921
	:	
MAJOR DRILLING AMERICA, INC.	:	

BEFORE: Duffy, Chairman; Jordan 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 May 11, 2007, the Commission received from mine contractor Major Drilling America, Inc. (“Major”) a handwritten note. We construe the note as a motion to reopen the penalty proposed within the assessment, which had become 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 January 23, 2007, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued proposed penalty assessment No. 000108938 to Major. According to Major, it did not return the assessment because it believed it had already contested the citation through the local MSHA district office via e-mail correspondence. In response, the Secretary requested that the Commission direct Major to provide a detailed explanation of why it believes reopening is warranted.

Major replied to the Secretary by letter dated May 29, 2007, detailing its contacts with MSHA local and regional offices, and included copies of the e-mails. On June 7, 2007, MSHA vacated the citation underlying the penalty assessment at issue. Consequently, the Secretary now requests that the Commission reopen the assessment and dismiss the proceeding as moot.

Here, where the request to reopen the penalty assessment has resulted in vacature of the citation underlying the assessment, there is no longer an outstanding penalty owed by Major. Because the lack of a penalty renders the penalty proceeding moot, we hereby dismiss the proceeding.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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