

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

July 24, 2008

SECRETARY OF LABOR,	:	Docket No. WEST 2008-992-M
MINE SAFETY AND HEALTH	:	A.C. No. 05-03153-142037
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2008-993-M
	:	A.C. No. 05-01197-145611
v.	:	
	:	Docket No. WEST 2008-994-M
DENISON MINES (USA) CORP.	:	A.C. No. 05-03780-145617
	:	
	:	Docket No. WEST 2008-995-M
	:	A.C. No. 42-00470-142235

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 May 12, 2008, the Commission received from Denison Mines (USA) Corp. (“Denison”) a letter seeking to reopen four 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).

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).

¹ Pursuant to Commission Procedural Rule 12, 29 C.F.R. § 2700.12, on our own motion, we hereby consolidate Docket Nos. WEST 2008-992-M, WEST 2008-993-M, WEST 2008-994-M, and WEST 2008-995-M, as all dockets involve similar procedural issues and similar factual backgrounds.

On February 28, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment Nos. 000142037, and 000142235 to Denison, proposing civil penalties for various citations. On April 3, 2008, MSHA issued Proposed Assessment Nos. 000145611 and 000145617, proposing penalties for other citations. In its request for relief, Denison states that it believed that it would be able to “discuss/contest” the citations during a meeting in Denver in April. It further explains that “[a]s this did not occur, we are later than we had planned on our response.” The Secretary states that she does not oppose the reopening of the proposed assessments.

Having reviewed Denison’s request and the Secretary’s response, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Denison’s failure to timely contest the penalty proposals and whether relief from the final orders should be granted. If it is determined that such relief is appropriate, 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

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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