

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

July 10, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 2008-1085
	:	A.C. No. 46-08676-141980
v.	:	
	:	
LITTLE EAGLE COAL CO.	:	

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”). On May 8, 2008, the Commission received from Little Eagle Coal Co. (“Little Eagle”) a motion by counsel seeking to reopen a penalty assessment that may have 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 February 27, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to Little Eagle Proposed Assessment No. 000141980, which proposed civil penalties for several citations. Little Eagle states that it mailed its contest of the proposed penalties for some of the citations on April 4, 2008, as the result of a delay in forwarding the assessment form. In response, the Secretary states that after reviewing the records in this case, she determined that the contest of the proposed assessment was timely, and docketed by the Commission as WEVA 2008-957.

Having reviewed Little Eagle's request and the Secretary's response, we conclude that the proposed assessment at issue has not become a final order of the Commission because Little Eagle timely contested it. We deny Little Eagle's motion as moot. Appropriate proceedings on Proposed Assessment No. 000141980 shall proceed in Docket No. WEVA 2008-957 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

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