



On May 6, 2009, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued Proposed Assessment No. 000184621 to Apex, proposing penalties for various citations. Apex's safety director states that on May 20, 2009, he indicated on the proposed assessment form that Apex intended to contest the penalties for seven citations. He further states that Apex mistakenly mailed the contest, together with payment for the uncontested penalties, to MSHA's office in St. Louis, Missouri, rather than to the Civil Penalty Compliance Office in Arlington, Virginia. The Secretary states that she does not oppose the reopening of the proposed penalty assessment. She notes that MSHA's St. Louis payment processing center received a payment from Apex for the uncontested penalties.

Having reviewed Apex's request and the Secretary's response, in the interests of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

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Mary Lu Jordan, Chairman

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Michael F. Duffy, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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