

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

June 1, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2009-468-M
v.	:	A.C. No. 24-02250-162526
	:	
ABC GRAVEL, INC.	:	

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners¹

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) (“Mine Act”). On January 28, 2009, the Commission received a letter regarding a penalty assessment issued to ABC Gravel, Inc. (“ABC”) 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).

ABC states that the assessment at issue, No. 000162526, was not received because there was no one at its address to receive the Federal Express delivery of the assessment. The Secretary confirms that the package was returned undelivered, and states that she will again mail the assessment to ABC, this time by US Postal Service certified mail, and that ABC will then have 30 days after receipt to either pay the proposed assessment or contest it.²

¹ Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 823(c), the Commission has delegated the power to rule on this reopening request to a three-member panel.

² The Secretary further explains that, if there is no one at ABC’s address of record, ABC will have to pick up the certified mailing at the local post office. The Secretary states that, if

Having reviewed ABC's letter and the Secretary's response, we deny ABC's request to reopen as moot. The Secretary may proceed as she has outlined in her response, and, if any of the proposed penalties are contested by ABC, this case shall proceed 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

ABC has another address at which someone would be available to receive and sign for mail, ABC should change its address of record to that address on its Legal Identity Report on file with MSHA.

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