

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

February 17, 2009

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| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA) | : | |
| | : | Docket No. CENT 2008-714-M |
| v. | : | A.C. No. 23-00288-117226 |
| | : | |
| ISP MINERALS, INC. | : | |

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. (2006) (“Mine Act”). On August 21, 2008, the Commission received from ISP Minerals, Inc. (“ISP”) a motion made by counsel to reopen a penalty assessment that 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).

The Secretary states that upon review of the record, she has found that service of the proposed assessment was not achieved, and as a result, the assessment did not become a valid final order. The Secretary plans to re-send the proposed assessment to the correct address and then ISP will have 30 days after receipt to contest the penalty. Accordingly, the Secretary submits that the request to reopen should be dismissed as moot.

Given the circumstances and in the interest of justice, we conclude that service of the proposed assessment was never made, and thus there is no final order under section 105(a) of the Mine Act. Hence, ISP's motion is moot and the motion is dismissed.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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