

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

January 13, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 2008-991
	:	A.C. No. 05-03836-141404
v.	:	
	:	
TWENTYMILE COAL COMPANY	:	

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 Twentymile Coal Company (“Twentymile”) a request 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).

On February 26, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000141404, which proposed civil penalties for various citations issued to Twentymile. Twentymile states that it received the proposed assessment on March 3, 2008, but that its safety assistant, having miscalculated the number of days in March, mistakenly believed that the contest of the proposed penalties was to be submitted to MSHA by April 3, 2008, rather than by April 2. On April 2, Twentymile’s safety assistant sent, by overnight mail, its contest indicating which proposed penalties it wished to contest. Twentymile submits that on April 21, 2008, MSHA sent a delinquency notice stating that the proposed penalty assessment had not been timely contested.

The Secretary states that she does not oppose Twentymile's request for relief.

We conclude that Twentymile's contest of the proposed penalty assessment was timely filed. Twentymile's allegation that it received Proposed Assessment No. 000141404 on March 3, 2008, is supported by MSHA's delinquency notice dated April 21, 2008, which also states that Twentymile received the proposed penalty assessment on March 3. Under the Mine Act and Commission Procedural Rule 26, the deadline for filing Twentymile's contest was April 2, 2008. When filing is by mail, filing is effective upon mailing. 29 C.F.R. § 2700.5(e)(2). Here, the record reveals that Twentymile mailed its contest by overnight mail on April 2, 2008.

For the foregoing reasons, we conclude that the proposed penalty assessment has not become a final order of the Commission because Twentymile timely contested it. We deny Twentymile's motion as moot and remand this matter to the Chief Administrative Law Judge for further proceedings as appropriate pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. *See State of Alaska Dep't of Transp. and Pub. Facilities*, 29 FMSHRC 389, 390 (June 2007).

---

Michael F. Duffy, Chairman

---

Mary Lu Jordan, Commissioner

---

Michael G. Young, Commissioner

---

Robert F. Cohen, Jr., Commissioner

Distribution:

R. Henry Moore, Esq.  
Jackson Kelly, PLLC  
Three Gateway Center  
Suite 1340  
401 Liberty Avenue  
Pittsburgh, PA 15222

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd.  
Room 2220  
Arlington, VA 22209-2296

Myra James, Chief  
Office of Civil Penalty Compliance  
MSHA  
U.S. Department of Labor  
1100 Wilson Blvd., 25th Floor  
Arlington, VA 22209-3939

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001-2021