

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

March 13, 2009

SECRETARY OF LABOR,	:	Docket No. WEVA 2008-879
MINE SAFETY AND HEALTH	:	A.C. No. 46-09020-123653
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 2008-880
	:	A.C. No. 46-09020-130296
	:	
DOUBLE BONUS COAL COMPANY,	:	Docket No. WEVA 2008-1354
	:	A.C. No. 46-09020-148893
	:	
	:	Docket No. WEVA 2008-1355
	:	A.C. No. 46-09020-145248
	:	
DYNAMIC ENERGY, INC.,	:	Docket No. WEVA 2008-
	:	1356
	:	A.C. No. 46-09062-147434
	:	
	:	Docket No. WEVA 2008-1448
	:	A.C. No. 46-09062-144939
	:	
	:	Docket No. WEVA 2008-1357
FRONTIER COAL COMPANY,	:	A.C. No. 46-09227-145258
	:	
	:	
	:	Docket No. WEVA 2008-1358
BLUESTONE COAL CORPORATION,	:	A.C. No. 46-08684-146783
	:	
	:	Docket No. WEVA 2008-1661
	:	A.C. No. 46-08684-150175
	:	
	:	Docket No. WEVA 2008-1359
JUSTICE HIGHWALL MINING, INC.,	:	A.C. No. 46-09123-147164
	:	
	:	Docket No. WEVA 2009-727
	:	A.C. No. 46-09031-162833
	:	
and	:	
	:	Docket No. WEVA 2008-1563
PAY CAR MINING, INC.	:	A.C. No. 46-08884-148891
	:	
	:	Docket No. WEVA 2009-812
	:	A.C. No. 46-08884-170006

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) (“Mine Act”). In each of the captioned cases, the Commission received 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).

Shortly before separate orders in the cases were finalized, the Secretary filed an opposition in one of the cases (*Pay Car Mining, Inc.*, Docket No. WEVA 2009-812), and indicated that she planned to file supplemental responses in many of the other cases, opposing the requested relief on the same or similar grounds as stated in her response in Docket No. WEVA 2009-812. The Commission takes the grounds for the Secretary’s opposition very seriously. Rather than address the Secretary’s change in position, in the interest of efficiently deciding multiple cases involving related operators, the Commission has decided to consolidate all of the cases¹ and issue the following order:

1. If the Secretary wishes to file an amended response regarding her position on reopening any of the above-captioned cases in addition to Docket No. WEVA 2009-812, she must do so simultaneously in those cases, and within 10 days of the issuance of this order. In any amended response, the Secretary can refer to and incorporate her response in Docket No. WEVA 2009-812.
2. The operators may file individual replies or a joint reply within 10 days of service of the Secretary’s amended response.² In so doing, the operators should address the Secretary’s allegations in detail, and must file affidavits from the involved operator personnel, contractors, and any other person whose testimony may be needed to explain fully the reasons for and circumstances surrounding the defaults. The operators should describe the details of their various systems for dealing with correspondence from MSHA during the period covered by these

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers WEVA 2008-879, WEVA 2008-880, WEVA 2008-1354, WEVA 2008-1355, WEVA 2008-1356, WEVA 2008-1357, WEVA 2008-1358, WEVA 2008-1359, WEVA 2008-1448, WEVA 2008-1563, WEVA 2008-1661, WEVA 2009-727, and WEVA 2009-812, all involving related operators and similar procedural issues. 29 C.F.R. § 2700.12.

² The operator may at that time also file a reply to the opposition to reopening the Secretary filed in *Justice Highwall Mining, Inc.*, Docket No. WEVA 2009-727.

cases. Copies of documents relevant to the operators' explanation should also be included. Failure of an operator to completely respond to the Secretary could result in the Commission's denying the operator's request to reopen with prejudice.³

3. If the Secretary chooses to respond to the operators' replies, she shall do so within seven days of service of the replies.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

³ The requests to reopen were sent by James F. Bowman, who describes himself as a "Consultant/Litigator." Commission Procedural Rule 3 provides that, in order to practice before the Commission, a person must either be an attorney or fall into one of the categories in Rule 3(b), which include parties, representatives of miners, an "owner, partner, officer or employee" of certain parties, or "[a]ny other person with the permission of the presiding judge or the Commission." 29 C.F.R. § 2700.3. It is unclear whether Mr. Bowman satisfied the requirements of Rule 3 when he filed the operators' requests. We have determined that, despite this, we will consider the merits of the operators' requests. However, in any future proceeding before the Commission, including further proceedings in these cases, Mr. Bowman must demonstrate to the Commission or presiding judge that he fits within one of the categories set forth in Rule 3(b)(1)-(3) or seek permission to practice before the Commission or judge pursuant to Rule 3(b)(4).

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