

**February 2023**

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**No Review Was Granted or Denied During The Month Of  
February 2023**

# **COMMISSION ORDERS**



# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

February 10, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

IRON CUMBERLAND, LLC

Docket No. PENN 2022-0029  
A.C. No. 36-05018-546442

Docket No. PENN 2022-0045  
A.C. No. 36-05018-544866

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”).<sup>1</sup> On February 23 and February 25, 2022, the Commission received from Iron Cumberland, LLC (“Iron Cumberland”) motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a), 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).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“JWR”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); JWR, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

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<sup>1</sup> For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers PENN 2022-0029 and PENN 2022-0045, involving similar procedural issues. 29 C.F.R. § 2700.12.

The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessments were delivered to the operator on November 12, 2021, and December 9, 2021. The assessments became final orders of the Commission on December 13, 2021, and January 10, 2022.

Iron Cumberland maintains that at the end of the 2021 year, the mine underwent new ownership, as well as a change to new management. The change in management included the hiring of a new Director of Safety in late December. This transition in leadership led to procedural and processing changes that resulted in the inadvertent mistake of failing to timely contest the proposed assessments.

Iron Cumberland first learned of the assessments when it received the delinquency notices in January and February 2022. The Secretary does not oppose the requests to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed Iron Cumberland's requests and the Secretary's responses, we find that due to inadvertent administrative errors resulting from changes in management at the mine, the operator failed to timely contest the penalty assessments. In the interest 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 petitions for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

/s/ Mary Lu Jordan  
Mary Lu Jordan, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

/s/ Timothy J. Baker  
Timothy J. Baker, Commissioner

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**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

February 10, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

SPECIALTY VERMICULITE, LLC

Docket No. SE 2022-0044  
A.C. No. 38-00085-546287

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2012) (“Mine Act”). On January 14, 2022, the Commission received from Specialty Vermiculite, LLC (“Specialty”) a motion seeking 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), 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).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“JWR”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); JWR, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicates that the proposed assessment was delivered to the operator on December 9, 2021. The assessment became a final order of the Commission on January 10, 2022.

Specialty states that within a month of receiving the citations in question, the Enoree Operations mine ceased operations on November 18, 2022, and 32 employees were laid off. While thirteen employees remained, only two were office staff, and five employees were subsequently diagnosed with COVID. The operator maintains that the cease in mine operations coupled with the effects of COVID resulted in confusion, uncertainty, and distraction among the remaining employees. Additionally, the employee responsible for contesting MSHA citations is not located at the Enoree mine and did not receive the assessment upon its delivery to the mine. When he did receive the assessment, he mistakenly believed that Specialty had time to contest the citations. When the employee realized his mistake, he immediately contacted counsel to file a motion to reopen. The Secretary does not oppose the request to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed Specialty's request and the Secretary's response, we find that due to an administrative error, the operator failed to timely contest the penalty assessment. In the interest 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.

/s/ Mary Lu Jordan  
Mary Lu Jordan, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

/s/ Timothy J. Baker  
Timothy J. Baker, Commissioner

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# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

February 10, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

AMBUSH MINING, INC.

Docket No. WEVA 2022-0089  
A.C. No. 46-09271-539461

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On December 1, 2021, the Commission received from Ambush a motion seeking 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), 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).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“JWR”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); JWR, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicates that the proposed assessment was delivered to the operator on August 12, 2021. The assessment became a final order of the Commission on September 13, 2021.

Ambush mining representative states that he personally prepared the notice of contest and placed it in the mail to MSHA on August 16, 2021. The contest was never received. The operator believes that this failure was the result of postal delays and personnel working from home due to the pandemic, which has affected how businesses operate and interrupted how records are processed and delivered. Ambush suggests that due to the large penalty amount involved, it always intended to contest the penalty. The operator discovered the failure when it received the delinquency notice dated November 23, 2021. It immediately filed a motion to reopen. The Secretary does not oppose the request to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed Ambush's request and the Secretary's response, we find that due to an administrative error, the penalty assessment was not timely contested. In the interest 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.

/s/ Mary Lu Jordan  
Mary Lu Jordan, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

/s/ Timothy J. Baker  
Timothy J. Baker, Commissioner

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# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

February 10, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

MILLER CONTRACTING SERVICES, INC.

Docket No. WEVA 2022-0173  
A.C. No. 46-04168-542650

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On January 28, 2022, the Commission received from Miller Contracting Services, Inc. (“Miller”) a motion seeking 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), 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).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“JWR”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); JWR, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicates that the proposed assessment was delivered to the operator on October 4, 2021. The assessment became a final order of the Commission on November 3, 2021.

On October 15, 2021, MSHA received a partial payment from the operator. Miller asserts that it also mailed its notice of contest packet on October 14, 2021. On January 22, 2022, Miller received a notice of delinquent payment and realized that MSHA had not received its contest. The operator believes that due to an internal miscommunication, its notice of contest was not mailed via certified mail, which resulted in the contest being lost in the mail. Miller states that it has updated its procedures to ensure that future contests are sent out using certified mail. The Secretary does not oppose the request to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed Miller's request and the Secretary's response, we find that due to an administrative error, the operator failed to timely contest the penalty assessment. In the interest 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.

/s/ Mary Lu Jordan  
Mary Lu Jordan, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

/s/ Timothy J. Baker  
Timothy J. Baker, Commissioner



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# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

February 10, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

ROCKWELL MINING, LLC

Docket No. WEVA 2022-0207  
A.C. No. 46-09377-544606

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On February 22, 2022, the Commission received from Rockwell Mining, LLC (“Rockwell”) a motion seeking 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), 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).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“JWR”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); JWR, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicates that the proposed assessment was delivered to the operator on November 13, 2021. The assessment became a final order of the Commission on December 13, 2021.

Rockwell asserts that a new office manager receptionist received the assessment on November 15, 2021, but the receptionist did not provide it to the Corporate Safety Director until February 2, 2022. Rockwell states that proposed assessments are supposed to be scanned and directed to the company's Corporate Safety Director. It further asserts that the employee has been trained in the correct procedures going forward. The Secretary does not oppose the request to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed Rockwell's request and the Secretary's response, we find that due to an inadvertent administrative error, the operator failed to timely contest the penalty assessment. In the interest 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.

/s/ Mary Lu Jordan  
Mary Lu Jordan, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

/s/ Timothy J. Baker  
Timothy J. Baker, Commissioner

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# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

February 16, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

U.S. SILICA

Docket No. WEVA 2022-0157  
A.C. No. 26-00680-544985

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On February 23, 2022, the Commission received from U.S. Silica a motion seeking 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), 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).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“JWR”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); JWR, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicates that the proposed assessment was delivered to the operator on November 19, 2021. The assessment became a final order of the Commission on December 20, 2021.

U.S. Silica asserts that due to operations and staff changes, the assessment was improperly handled. Specifically, once the assessment was received at the correct company office, a new administrative assistant, unaware of the proper procedure, mistakenly sent the assessment to an interim manager at another office. The operator discovered the assessment on January 31, 2022, and immediately filed a contest. The Secretary does not oppose the request to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed U.S. Silica's request and the Secretary's response, we find that due to an inadvertent administrative error, the operator failed to timely contest the penalty assessment. In the interest 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.

/s/ Mary Lu Jordan  
Mary Lu Jordan, Chair

/s/ William I. Althen  
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.  
Marco M. Rajkovich, Jr., Commissioner

/s/ Timothy J. Baker  
Timothy J. Baker, Commissioner

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# **ADMINISTRATIVE LAW JUDGE DECISIONS**



**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
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February 9, 2023

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

v.

APPALACHIAN RESOURCE WEST  
VIRGINIA, LLC,  
Respondent

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2022-0516  
A.C. No. 46-08930-558400

Mine: Grapevine South Surface Mine

**ORDER TO VACATE**  
**DECISION APPROVING SETTLEMENT**  
**ORDER TO MODIFY**  
**ORDER TO PAY**

Before: Judge Sullivan

This case is before me upon petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977. The Secretary has filed a Motion to Approve Settlement and has set forth the factual basis for the proposed modifications. The Respondent has agreed to the proposed changes. The originally assessed amount for the citations at issue was \$18,550.00 and the proposed settlement amount is \$11,000.00.

The proposed settlement includes:

<b>Citation/ Order No.</b>	<b>Originally Proposed Assessment</b>	<b>Settlement Amount</b>	<b>Modification</b>
9565168	\$ 518.00	\$ 518.00	No change.
9565170	\$ 234.00	\$ 234.00	No change.
9565171	\$ 378.00	\$ 378.00	No change.
9565172	\$ 1,285.00	\$ 800.00	Vacate 104(b) order and modify negligence from "Low" to "None"
9565173	\$ 7,473.00	\$ 4,000.00	Vacate 104(b) order
9565177	\$ 2,077.00	\$ 1,000.00	Vacate 104(b) order and modify negligence from "Low" to "None"

9565178	\$ 234.00	\$ 234.00	No change.
9565179	\$ 198.00	\$ 198.00	No change.
9565180	\$ 133.00	\$ 133.00	No change.
9565181	\$ 1,869.00	\$ 934.00	Modify negligence from “Low” to “None”
9565182	\$ 234.00	\$ 234.00	No change.
9565183	\$ 3,022.00	\$ 1,442.00	Modify gravity from “Reasonably Likely” to “Unlikely” and remove S&S designation
9565184	\$ 234.00	\$ 234.00	No change.
9565185	\$ 661.00	\$ 661.00	No change.
<b>Total</b>	<b>\$ 18,550.00</b>	<b>\$ 11,000.00</b>	

This case involves fourteen citations. Three of these citations have associated withdrawal orders issued pursuant to section 104(b) of the Mine Act, 30 U.S.C. § 814(b). The Secretary’s motion seeks the vacatur of all three 104(b) orders. Two of these orders—Orders Nos. 9565191 and 9565192, associated with Citations Nos. 9565172 and 9565173, respectively—were included in the Secretary’s petition in this case. The third 104(b) order, which accompanies Citation No. 9565177, was missing from the penalty petition. Because I highly doubted that there is any basis upon which I could approve a settlement motion specifying vacatur of an order I had never seen, by e-mail dated January 25, 2023, my law clerk requested that the Secretary provide a copy of the third order to correct the omission in the docket.

In a February 8, 2023 filing in response, the Secretary refused to do so, perhaps motivated by pending litigation in *Perry County Resources, LLC*, Docket No. KENT 2022-0024. See ALJ Order Denying Sec’y’s Settlement Mot. and Sec’y’s Mot. to Certify for Interlocutory Review (Oct. 5, 2022); Commission Order (Dec. 6, 2022) (granting interlocutory review). The motion for settlement here, by specifically including vacatur of associated 104(b) orders, greatly distinguishes this docket from the *Perry County* case. Fortunately, the Respondent quickly stepped forward to forestall further needless delay by providing a copy of the missing Order, No. 9567104, for the record in the case.

After reviewing the motion and the relevant 104(b) orders, I find that the Secretary has set forth the justification for the proposed modifications. As required by the Mine Act, I have reviewed the motion and penalty criteria and evaluated the proposed settlement pursuant to the requirements set forth in Sections 110(i) and 110(k). The parties agree to the size of this operator, good faith abatement, and the ability to pay. The history of violations has been considered. The negligence and gravity of the violations are addressed in the motion, in the citation, and in the file in general.

I accept the representations and modifications of the Secretary as set forth in the motion to approve settlement. I have considered the representations and documentation submitted, find that the modifications are reasonable, and conclude that the proposed settlement is appropriate under the criteria set forth in Section 110(i) of the Act. Accordingly, Orders Nos. 9565191, 9565192, and 9567104 are **VACATED** and the motion to approve settlement is **GRANTED**.

It is **ORDERED** that the negligence for Citations Nos. 9565172, 9565177, and 9565181 be **MODIFIED** from “Low” to “None.”

It is **ORDERED** that the gravity for Citation No. 9565183 be **MODIFIED** from “Reasonably Likely” to “Unlikely,” and that the S&S designation be removed.

It is further **ORDERED** that the Respondent pay the Secretary of Labor the sum of **\$11,000.00** within 30 days of the date of this Decision.<sup>1</sup>

/s/ John T. Sullivan  
John T. Sullivan  
Administrative Law Judge

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<sup>1</sup> Please pay penalties electronically at [Pay.Gov](https://www.pay.gov), a service of the U.S. Department of the Treasury, at <https://www.pay.gov/public/form/start/67564508>. Alternatively, send payment (check or money order) to: U.S. Department of Treasury, Mine Safety and Health Administration, P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket and A.C. Numbers.



# **ADMINISTRATIVE LAW JUDGE ORDERS**





# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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February 6, 2023

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
on behalf of ROBERT M. CARLUCCI,  
Complainant,

v.

SPARTAN MINING COMPANY, LLC,  
Respondent

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. WEVA 2023-0110  
MSHA Case No. PINE-CD 2023-01

Mine: Road Fork No. 52  
Mine ID: 46-09522

## **ORDER OF TEMPORARY REINSTATEMENT**

Before: Judge Sullivan

Pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“Act”), 30 U.S.C. § 801, *et. seq.*, and 29 C.F.R. § 2700.45, on December 19, 2022, the Secretary of Labor (“Secretary”) filed an Application for Temporary Reinstatement of miner Robert M. Carlucci (“Complainant”) to his former position with Spartan Mining Company, LLC (“Respondent”) at its Road Fork No. 52 Mine. The application’s certificate of service states that it was served on Respondent by electronic mail that same day, and otherwise satisfies the procedural requirements of Commission Procedural Rule 45(b) in that, among other things, it timely “states the Secretary’s finding that the miner’s discrimination complaint was not frivolously brought[,] accompanied by an affidavit setting forth the Secretary’s reasons supporting his finding[,] and includes a copy of the miner’s complaint to the Secretary . . . .” 29 C.F.R. § 2700.45(b).<sup>1</sup>

According to Commission Rule 45(c), a request for hearing must be filed within 10 days following a respondent’s receipt of the Secretary’s application for temporary reinstatement. 29 C.F.R. § 2700.45(c). Respondent here filed no such request by the December 29, 2022 due date. Rather, upon assignment of this matter to the undersigned on January 5, 2023, the parties requested time in which to negotiate and submit an agreement under which the Complainant would receive economic reinstatement in lieu of immediately returning to work for Respondent. On February 3, 2023, the Temporary Economic Reinstatement Agreement (“Agreement”), signed by the Complainant and representatives of the Secretary and the Respondent, was submitted in this case.

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<sup>1</sup> The Discrimination Complaint (“Complaint”) filed with the Secretary’s Mine Safety and Health Administration by the Complainant is dated October 31, 2022, thus well within 60 days of the Complainant’s October 18 termination of employment. *See* 30 U.S.C. § 815(c)(2).

Despite the lack of a request for a hearing and the filing of the Agreement, I am required to review the contents of the Secretary's application to determine whether the complaint in this instance "was not frivolously brought." 29 C.F.R. § 2700.45(c).

Section 105(c)(1) of the Mine Act provides that "[n]o person shall discharge . . . any miner . . . because such miner . . . has filed or made a complaint under or related to this Act, including a complaint notifying the operator . . . of an alleged danger or safety or health violation in a . . . mine . . . ." 30 U.S.C. § 815(c)(1). In the Application, as supported by his investigator's affidavit, the Secretary alleges the following to establish the Complaint as having been not frivolously brought under section 105(c)(1) & (2):

- (1) After working at the mine for approximately 13 months at various positions, including roof bolter, the Complainant, during his October 18, 2022 shift, took a shuttle car out of service due to its brakes failing during his operation of it, and notified mine management;
- (2) Respondent's agents immediately took issue with Complainant's actions, including Section Foreman Dale Gibson telling Complainant that he would permit him to only "operate a shovel" on the section. After Complainant asked for a ride to the surface to speak with the safety department or mine superintendent about these matters, on the way out of the mine Evening Shift Foreman Dickie Lester informed him that his leaving the mine would be considered tantamount to quitting his job there.
- (3) Upon Complainant's arrival at work the following day, Safety Manager Scott Toler informed him that Respondent considered his traveling to the surface the prior day as a termination of his employment.

The Respondent having not opposed the Application, I agree with the Secretary that it establishes the Complaint to have been "not frivolously brought" in this instance. *See Jim Walters Res., Inc. v. FMSHRC*, 920 F.2d 738, 747 (11th Cir. 1990) (relying upon Mine Act legislative history and the Supreme Court's treatment of a similar whistleblower protection provision to conclude that the "not frivolously brought" standard is the equivalent of a "reasonable cause to believe" standard and is met when a miner's "complaint appears to have merit").

In addition, I have reviewed the terms of the Agreement and find that they do not appear to reduce Complainant's rights under section 105(c)(2). The Agreement shall remain on file in this proceeding. I reach no conclusion beyond that regarding the merits of the Complaint.

**WHEREFORE**, the Application is **GRANTED**, and it is **ORDERED** that reinstatement shall remain in effect until such time that the Secretary provides notification that he will not be

bringing a discrimination case in chief on behalf of the Complainant,<sup>2</sup> or such a case is brought and there is a final determination on it by decision, approval of settlement, or other order of this court or the Commission. I retain jurisdiction over this temporary reinstatement proceeding for such purposes as are necessary, as provided by 29 C.F.R. § 2700.45(e)(4).

/s/ John T. Sullivan  
John T. Sullivan  
Administrative Law Judge

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Robert Carlucci, PO Box 421, Matheny, West Virginia 24860

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<sup>2</sup> Section 105(c)(3) of the Act directs the Secretary to notify a complainant whether a section 105(c) violation occurred within 90 days of the filing of a complaint, which in this instance would have been no later than Monday, January 30, 2023. 30 U.S.C. § 815(c)(3). The Secretary's representative is hereby **ORDERED** to provide an update regarding the status of the Secretary's investigation of the Complaint no later than seven days from the date of this Order.

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVENUE, N.W., SUITE 520N  
WASHINGTON, D.C. 20004

February 14, 2023

CACTUS CANYON QUARRIES, INC.  
Contestant,

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Respondent.

CONTEST PROCEEDING

Docket No. CENT 2023-0068-RM  
E-Document No. 3122645; 08/11/2022

Fairland Plant & Qys  
Mine ID 41-00009

## ORDER OF DISMISSAL

This case involves a mine operator in Texas seeking an order from the Commission that would force MSHA to act on its applications for mine identification numbers (“Mine IDs”). The Secretary of Labor argues that the Commission lacks jurisdiction. After my consideration of the entire record, I agree with the Secretary that I have no jurisdiction over this matter.

### Procedural Background

This matter is before me after Cactus Canyon Quarries, Inc. (“CCQI”) through counsel filed a document on November 15, 2022, with the caption “Civil Proceeding to Perform Ministerial Act of Assigning Mine ID” and titled “Contest Proceeding, 30 U.S.C. § 815(d), 29 C.F.R. § 2700.20.” In its filing CCQI argues that MSHA failed to assign Mine IDs for several of CCQI’s intermittent surface mines, and thus CCQI petitions the Commission to require MSHA “to perform the ministerial act of assigning a mine ID to the 10 captioned min[e]s as required by 30 U.S.C. § 803 and MSHA Form 7000-51.” (Doc. at 1–2.) CCQI attached four exhibits which contain correspondence with MSHA and copies of forms it submitted to MSHA requesting Mine IDs. (Doc., Exs. 1–4.)

The Commission’s docket office processed the document as a contest proceeding under section 105 of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815, and assigned the matter a docket number on January 5, 2023. Thereafter, the Secretary of Labor filed his Motion to Dismiss on January 12, 2023, claiming the Commission should dismiss this case for lack of jurisdiction. (Mot. at 1.) Specifically, the Secretary argues that “[n]othing in the Mine Act gives the Commission . . . authority to compel MSHA to issue Mine IDs,” and that the Commission is not a court of general jurisdiction. (Mot. at 2.) Thereafter, on January 13, 2023, Chief Administrative Law Judge Glynn F. Voisin assigned me this docket.

On January 18, 2023, the Operator filed a document titled “Supplement to Contest Proceeding, 30 U.S.C. § 815(d), 29 C.F.R. § 2700.20, Notice of Inaccurate and Misleading Caption,” which was not a direct response to the Secretary’s motion but an attempt by CCQI to provide additional information and grounds regarding its initial filing by attaching five additional exhibits including emails and other correspondence. (Suppl. Doc., Exs. 5–9.) Nevertheless, I

waited ten days for the operator to file a formal response to the Secretary's motion per Commission Procedural Rule 10, 29 C.F.R. § 2700.10, but received nothing further.

### Jurisdiction Under the Mine Act

Although CCQI titles both its initial filing and its supplemental filing a "Contest Proceeding," neither filing is a contest of any citation or order issued by MSHA under section 104 of the Mine Act, 30 U.S.C. § 814. Indeed, Commission Procedural Rule 20 is titled "Notice of contest of a citation or order issued under section 104 of the Act" and specifically lists what mine operators may contest before the Commission. Under Commission Procedural Rule 20(a)(1)—

- (1) An operator may contest:
  - (i) A citation or an order issued under section 104 of the Act, 30 U.S.C. 814;
  - (ii) A modification of a citation or an order issued under section 104 of the Act; and
  - (iii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

29 C.F.R. § 2700.20(a)(1). The Commission's rule tracks with section 105(d) of the Mine Act noting, in relevant part, those matters that may come before the Commission:

If, within 30 days of receipt thereof, an operator of a coal or other mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 814 of this title, or citation or a notification of proposed assessment of a penalty issued under subsection (a) or (b) of this section, or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 814 of this title, . . . the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing . . . .

30 U.S.C. § 805(d). Though not applicable in this case, section 105(c) gives Commission Judges jurisdiction over claims of discrimination and interference, and section 107(e) gives operators an opportunity for a hearing to contest imminent danger orders. 30 U.S.C. §§ 815(c), 817(e).

### Analysis

Both CCQI's initial and supplemental filings list ten electronic document numbers generated by MSHA whenever a mine operator electronically submits Form 7000-51 to request a Mine ID. In the caption of its filings, CCQI lists the document numbers of the ten named mines for which it seeks (or previously sought) Mine IDs. Only one of the ten listed mines received a Mine ID. (Suppl. Doc. at 4.) In neither filing does CCQI contest a citation or order issued by

MSHA under section 104. Neither does CCQI contest a modification or the time for abatement of a citation or order issued under section 104. Section 104, 30 U.S.C. § 814, refers to citations or orders issued by an authorized representative (“AR”) of the Secretary (MSHA inspector) to mine operators for violations of mandatory health or safety standards. CCQI’s claims regarding the approval of Mine IDs do not entail the issuance of a citation or order for violations of mandatory health or safety standards, and thus do not come under this section of the Mine Act. Indeed, CCQI cites to no case law to support its contention. Therefore, I determine CCQI has not brought a valid notice of contest under Commission Procedural Rule 20, 29 C.F.R. § 2700.20, or section 105(d) of the Mine Act, 30 U.S.C. § 815(d).<sup>1</sup>

Moreover, CCQI’s arguments and citations to the Mine Act are confusing and misplaced. In its supplemental submission CCQI attempts to justify its filings with the Commission by citing the entire Mine Act “including without limitation §802, §803, §815(d), and §823(d).” (Suppl. Doc. at 1.) Despite this broad approach, CCQI fails to cite to any provision in the Mine Act that would give the Commission jurisdiction to hear a matter involving the issuance of Mine IDs. For instance, section 3 of the Mine Act, 30 U.S.C. § 802, is simply a list of statutory definitions and section 4, 30 U.S.C. § 803, refers to mines subject to the Mine Act. As discussed above, section 105(d), 30 U.S.C. § 815(d), does not confer jurisdiction over matters of issuing Mine IDs but refers to contests of citations and orders issued to mine operators for violations of safety and health standards. Finally, section 113, 30 U.S.C. § 823(d), simply discusses the structure of the Commission and the role of its administrative law judges and does not confer general jurisdiction to hear any matter related to the Mine Act. None of the sections of the Mine Act specifically cited by CCQI confer jurisdiction on me to hear matters involving Mine IDs, and I am unaware of any other sections that would do so. Nor can CCQI point to any of the Commission’s procedural rules that would provide an avenue for instituting such a proceeding.

Consequently, I must address the Secretary’s motion to dismiss for lack of jurisdiction. Commission Procedural Rule 1(b) states: “On any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. 554 and 556), the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.” 29 C.F.R. § 2700.1(b). Here, I am guided by Rule 12(b)(1) of the Federal Rules of Civil Procedure on motions to dismiss for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Because I conclude that I do not have subject matter jurisdiction to review CCQI’s matter involving the issuance of Mine IDs, this case must be dismissed. *See Star Mine Operations, LLC*, 36 FMSHRC 3326, 3327 (Dec. 2014) (ALJ) (dismissing a case pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction).

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<sup>1</sup> In its supplemental submission, CCQI attaches a copy of Citation No. 9678444 issued on October 26, 2022, to CCQI at Fairland Plant & Qys (Mine ID 41-00009), and correspondence with MSHA about the non-issuance of Mine IDs to CCQI. (Suppl. Doc., Ex. 8.) Under Commission Procedural Rule 20(b), an operator must file a contest of a citation within thirty days of issuance of the citation. 29 C.F.R. § 2700.20(b). CCQI did not formally contest this citation. Yet, even if I were to construe the supplemental submission as the contest of a citation issued under section 104, CCQI failed to submit a contest of Citation No. 9678444 within thirty days of its issuance on October 26, 2022, and as such it would be dismissed as untimely.

**WHEREFORE**, it is hereby **ORDERED** that Docket No. CENT 2023-0068-RM is **DISMISSED** with prejudice for lack of subject matter jurisdiction.

s/ Alan G. Paez  
Alan G. Paez  
Administrative Law Judge

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**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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DENVER, CO 80202-2500  
TELEPHONE: 303-844-5266 / FAX: 303-844-5268

February 14, 2023

MORTON SALT, INC.,  
Contestant,

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION, (MSHA),  
Respondent.

CONTEST PROCEEDINGS

Docket No. CENT 2023-0069  
POV Notice 9679401; 12/01/2022

Docket No. CENT 2023-0070  
Order No. 9673196; 12/12/2022

Docket No. CENT 2023-0071  
Order No. 9674873; 12/07/2022

Docket No. CENT 2023-0072  
Order No. 9674876; 12/12/2022

Docket No. CENT 2023-0073  
Order No. 9674877; 12/12/2022

Docket No. CENT 2023-0074  
Order No. 9674883; 12/14/2022

Docket No. CENT 2023-0075  
Order No. 9674887; 12/14/2022

Docket No. CENT 2023-0076  
Order No. 9674888; 12/20/2022

Docket No. CENT 2023-0077  
Order No. 9674891; 12/20/2022

Docket No. CENT 2023-0078  
Order No. 9674895; 12/28/2022

Mine: Weeks Island Mine and Mill  
Mine ID: 16-00970



**ORDER GRANTING IN PART SECRETARY OF LABOR'S  
MOTION TO DISMISS CONTEST TO POV NOTICE**

**ORDER OF DISMISSAL**

Before: Judge Simonton

These cases are before me upon notices of contest filed by Morton Salt Inc. (“Morton”) under Section 105(d) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 801 et seq. Docket No. CENT 2023-0069 was assigned by the Commission’s docket office to a contest of a Pattern of Violations (POV) Notice, which was issued by MSHA on December 1, 2022.<sup>1</sup> Notably, however, Morton did not contest the POV Notice itself. Instead, it contested nine Section 104(e) withdrawal orders issued following the POV Notice and simply referenced the POV Notice, No. 9679401, in each of those notices of contest.<sup>2</sup> *See, e.g.*, Notice of Contest, CENT 2023-0070. Accordingly, it appears that Docket No. CENT 2023-0069 may have been created in error.

On January 24, 2023, the Secretary moved to dismiss CENT 2023-0069 and to strike any reference to Morton’s contest of the POV Notice in each 104(e) Notice of Contest filed in Docket Nos. CENT 2023-0070, CENT 2023-0071, CENT 2023-0072, CENT 2023-0073, CENT 2023-0074, CENT 2023-0075, CENT 2023-0076, CENT 2023-0077, and CENT 2023-0078. The Secretary argues that the Federal Mine Safety and Health Review Commission lacks jurisdiction over a contest to a POV Notice pursuant to the Commission’s holding in *Pocahontas Coal Co., LLC*, 38 FMSHRC 176 (Feb. 2016). Sec’y of Labor’s Mot. to Dismiss Contest to POV Notice at 2. According to the Secretary, Morton cannot establish the Commission’s jurisdiction over its contest of the POV Notice. *Id.* at 4.

Morton filed a Statement in Opposition to the Secretary’s Motion to Dismiss on February 3, 2023. In its statement, Morton confirms that it “did not file a Notice of Contest to the POV Notice; it did not directly challenge or contest the POV notice.” Contestant’s Statement in Opp’n to Sec’y of Labor’s Mot. to Dismiss Contest to POV Notice at 2. Morton argues that the POV notice, since it is joined by the nine Section 104(e) withdrawal orders MSHA issued after the POV Notice, does not stand alone. *Id.* Morton asserts that because it is indirectly challenging the POV Notice by contesting the withdrawal orders, the court does not need to dismiss Docket No.

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<sup>1</sup> If an operator has a pattern a pattern of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of coal or other mine health or safety standards, Section 104(e)(1) of the Mine Act directs MSHA to issue a notice of such pattern to the operator. 30 U.S.C. § 814(e)(1). If any inspection within 90 days following the notice reveals a significant and substantial violation of a mandatory health or safety standard, MSHA must issue a withdrawal order. *Id.* Section 104(e) also provides for MSHA’s issuance of additional withdrawal orders for subsequent significant and substantial violations discovered until an inspection of the entire mine reveals no significant and substantial violations of mandatory health or safety standards. *Id.* § 814(e)(2)-(3).

<sup>2</sup> The contest cases, Docket Nos. CENT 2023-0070 through CENT 2023-0078, were assigned to me alongside Docket No. CENT 2023-0069.

CENT 2023-0069 but should instead consolidate it with the contests of the nine Section 104(e) withdrawal orders and issue an order confirming that Morton seeks review of the POV Notice during the contest of those orders. *Id.* at 3-5.

In *Pocahontas Coal Co., LLC*, the Commission held that “the language of section 105(d) does not give the Commission authority to review a direct challenge to a POV notice.” 38 FMSHRC 176 at 182. However, an operator may obtain Commission review of a POV notice during a contest of a related withdrawal order issued under Section 104(e). *Id.* at 184. Accordingly, Morton will be able to challenge the validity of the POV Notice during the contest proceedings for the nine dockets challenging the Section 104(e) withdrawal orders. I thus see no legitimate reason to grant the portion of the Secretary’s motion that requests the court strike any reference to Morton’s contest of the POV Notice in the Notices of Contest in Docket Nos. CENT 2023-0070 through CENT 2023-0078. I do find, however, that dismissal of Docket No. CENT 2023-0069 is appropriate. Both parties recognize that the Commission does not have jurisdiction to review a POV notice standing alone, and, procedurally, it stands alone in Docket No. CENT 2023-0069. It is properly challenged indirectly in Docket Nos. CENT 2023-0070 through CENT 2023-0078 and I will hear arguments about its validity in those proceedings.

Accordingly, the Secretary’s Motion to Dismiss Contest to POV Notice is hereby **GRANTED IN PART**. It is **ORDERED** that Docket No. CENT 2023-0069 is **DISMISSED**.

/s/ David P. Simonton  
David P. Simonton  
Administrative Law Judge

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