FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

July 21, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. KENT 2006-386
ADMINISTRATION (MSHA)	:	A.C. No. 15-18629-81483
	:	
v.	:	Docket No. KENT 2006-387
	:	A.C. No. 15-18629-83815
MARSH COAL COMPANY	:	
	:	Docket No. KENT 2006-388
	:	A.C. No. 15-18629-73612
	:	
	:	Docket No. KENT 2006-389
	:	A.C. No. 15-18629-75890
	:	
	:	Docket No. KENT 2006-390
	:	A.C. No. 15-18629-86540

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, 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").[1] On July 5, 2006, the Commission received a letter from Marsh Coal Company ("Marsh Coal") requesting that the Commission reopen five 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). Accompanying the letter were copies of the proposed penalty assessments at issue. The Secretary of Labor filed a response to Marsh Coal's letter on July 11, 2006.

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[1] Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2006-386, KENT 2006-387, KENT 2006-388, KENT 2006-389, and KENT 2006-390, all captioned *Marsh Coal Company* and all involving similar procedural issues. 29 C.F.R. § 2700.12.

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 November 29, 2005, and January 3, February 28, March 28, and May 2, 2006, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued proposed penalty assessments to Marsh Coal. In its letter, Marsh Coal states that it is unable to pay the assessments ("we don't have the money"). The company offers no explanation, however, for its failure to timely contest the proposed assessments. In her response, the Secretary states that Marsh Coal "identifies no legally cognizable grounds for requesting reopening" because the company's "stated reason of not having the money to pay does not meet any of the legal requirements of Rule 60(b)" of the Federal Rules of Civil Procedure. S. Resp. at 2.

We have held 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 section 105(a) orders, the Commission has found guidance in Rule 60(b) under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of inadvertence or mistake. *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.

Because Marsh Coal's request for relief does not explain the company's failure to contest the proposed assessments, and is not based on any of the grounds for relief set forth in Rule 60(b), we hereby deny the request for relief without prejudice.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

Distribution

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