

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

December 11, 2020

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
v. : Docket No. WEST 2020-0221  
: A.C. No. 35-02479-505543  
TIDE CREEK AGGREGATES, LLC :

BEFORE: Rajkovich, Chairman; Althen and Traynor, 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 March 24, 2020, the Commission received from Tide Creek Aggregates, LLC (“Tide Creek”) 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) 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).

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).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment in this docket was delivered on December 18, 2019, and became a final order of the Commission on January 21, 2020. In its motion to reopen,

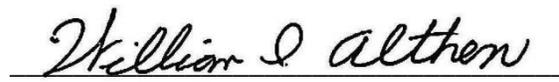
Tide Creek says that it timely contested the assessments at issue, but inadvertently sent the notice of contest to MSHA's penalty payment office in St. Louis. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Tide Creek's request and the Secretary's response, we find that the motion sufficiently explains the failure to timely contest the assessment here as the result of inadvertence, mistake, and excusable neglect. 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.



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Marco M. Rajkovich, Jr., Chairman



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William I. Althen, Commissioner



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Arthur R. Traynor, III, Commissioner

Distribution (by e-mail):

Scott T. Parker  
Member/Manager  
Tide Creek Aggregates  
[scapoosesgbilling@gmail.com](mailto:scapoosesgbilling@gmail.com)

Archith Ramkumar  
Appellate Counsel  
U.S. Department of Labor  
Office of the Solicitor  
[Ramkumar.Archith@dol.gov](mailto:Ramkumar.Archith@dol.gov)

Chief Administrative Law Judge Glenn Voisin  
Federal Mine Safety & Health Review Commission  
[GVoisin@fmshrc.gov](mailto:GVoisin@fmshrc.gov)

Melanie Garris  
Office of Civil Penalty Compliance  
Mine Safety and Health Administration  
[Garris.Melanie@DOL.GOV](mailto:Garris.Melanie@DOL.GOV)