

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

July 13, 2021

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEST 2020-0275-M
ADMINISTRATION (MSHA)	:	A.C. No. 04-05724-505659
	:	
v.	:	
	:	
PEDROTTI MATERIALS, LLC	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

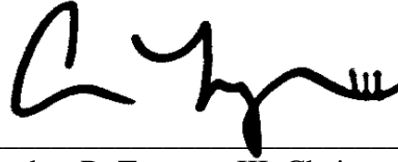
This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On May 12, 2020, Pedrotti Materials, LLC filed a motion seeking to reopen a penalty assessment under section 105(a) of the Mine Act, 30 U.S.C. § 815(a), that had appeared to become a final order of the Commission.

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).

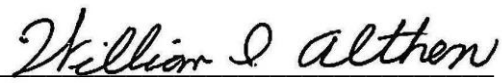
Pedrotti asserts that it never received the proposed penalty assessment at issue because the Secretary mailed it to the wrong address. The Secretary confirms that his Mine Safety and Health Administration erroneously mailed the proposed assessment to an incorrect address.

Having reviewed Pedrotti’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator never received the proposed assessment. This obviates any need to invoke Rule 60(b) of the Federal Rules of Civil Procedure in order to consider reopening a final order.

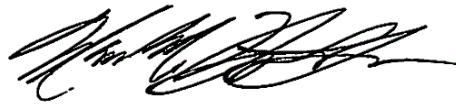
Accordingly, the operator's motion to reopen is moot, and this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

Distribution:

Jason Pedrotti
Pedrotti Materials, LLC
P.O. Box 994283
Redding, CA 96099
pedrottimaterials@gmail.com

John M. McCracken, Esq.
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
McCracken.John.M@dol.gov

Archith Ramkumar, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202
Ramkumar.Archith@dol.gov

April Nelson, Esq.
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Nelson.April@dol.gov

Melanie Garris
U.S. Department of Labor
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Garris.Melanie@dol.gov

Chief Administrative Law Judge Glenn Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov