

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**January 5, 2026**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

NATIONAL LIME AND STONE  
COMPANY

Docket No. LAKE 2025-0237  
Order No. 9809823; 04/14/2025

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

**ORDER**

BY: Rajkovich, Chair; Jordan, and Baker, Commissioners:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On May 23, 2025, the Commission received from National Lime and Stone Company (“National Lime”) a motion seeking to reopen an imminent danger withdrawal order that had been issued pursuant to section 107(a) of the Mine Act, 30 U.S.C. § 817(a).

Under section 107(e)(1) of the Mine Act, an operator who wishes to contest an imminent danger order under section 107(a) may request review by the Commission no later than 30 days after being notified of such order. Commission Procedural Rule 9 allows the Commission to extend the filing time for a document for good cause shown. 29 C.F.R. § 2700.9(a). The rule allows the Commission to grant motions for extensions of time after the designated filing time has expired if the party requesting the extension can show, in writing, the reasons for its failure to make the request before the filing deadline. 29 C.F.R. § 2700.9(b).

The section 107(a) order that National Lime seeks to contest was issued on April 14, 2025. Therefore, the deadline for contesting it under section 107(e)(1) was May 14, 2025. National Lime asserts that it submitted a request to conference a citation and two orders, including Order No. 9809823, then imminent danger withdrawal order. According to the operator, it believed in good faith that, in submitting its request to conference, it had timely contested the violations. However, it became aware on May 22, 2025 that there is a separate process for contesting imminent danger orders, found at 29 C.F.R. 2700.22. It filed its motion to reopen the next day.

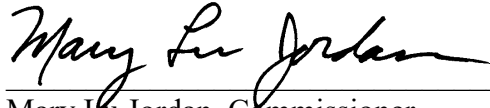
We note that National Lime appears to have believed in good faith that it had timely contested the violations, and it moved to reopen the timeframe to contest Order No. 9809823 the day after it became aware that its contest of the order was untimely. The operator filed its motion just one week after the time to contest the imminent danger order had passed. 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 National Lime's request and the Secretary's response, we find that the facts of this case justify relief under Rule 60(b). 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.



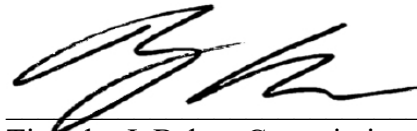
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Marco M. Rajkovich, Jr., Chair



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Mary Lu Jordan, Commissioner



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Timothy J. Baker, Commissioner

Commissioner Marvit, dissenting:

I write to disagree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, 46 FMSHRC 965 (Dec. 2024), I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975 (citing *Hancock Materials, Inc.*, 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's order became final under the language of section 105(a). The Majority, however, votes to reopen the case. The Mine Act has not granted us authority to reconsider final orders of the Commission as I set out more fully in *Explosive Contractors*. To the contrary, it has limited our authority to do so. Therefore, I respectfully dissent and would deny reopening.

A handwritten signature in black ink, appearing to read 'M. Marvit', is positioned above a horizontal line.

Moshe Z. Marvit, Commissioner

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Chief Administrative Law Judge Glynn F. Voisin

Office of the Chief Administrative Law Judge
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Federal Mine Safety Health Review

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