

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

January 5, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

MOUNTAIN STONE AGGREGATE

Docket No. WEST 2025-0262
A.C. No. 45-03769-615562

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

ORDER

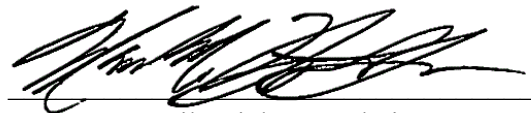
BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (20124) (“Mine Act”). On May 28, 2025, the Commission received from Mountain Stone Aggregate (“Mountain Stone”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

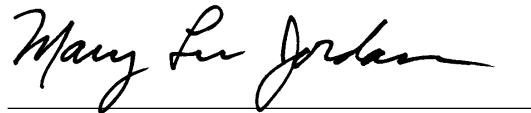
Mountain Stone asserts that it never received the proposed assessment because it was delivered to the wrong address by the Mine Safety and Health Administration (“MSHA”). In support, it attaches a copy of its Form 2000-7 noting its current address, which is not the address to which the citations were sent.

The Secretary notes that records cannot confirm that MSHA’s mailed proposed assessment was delivered to and received by Mountain Stone. As such, she does not oppose Mountain Stone’s motion to reopen.

Having reviewed Mountain Stone's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because it was never served on the operator. The Commission has held that when an assessment is sent to the wrong address, it does not become a final order, so a request to reopen it is moot. *See Petra Materials*, 32 FMSHRC 1113, 1116 (Sept. 2010); *see also, e.g., American Sand Co. LLC*, 42 FMSHRC 767 (Oct. 2020) (applying this principle to an order of default when the Chief Judge's order to show cause was sent to the wrong address). This obviates any need to invoke Rule 60(b). 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

Distribution:

Kim Redding, Consultant
N - Compliance Safety Services, Inc.
2949 S. Jiovanni Ave.
Meridian, ID 83642
redding1562@msn.com

Thomas A. Paige, Esq.
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Paige.Thomas.a@dol.gov

Melanie Garris
US Department of Labor/MSHA
Office of Assessments, Room N3454
200 Constitution Ave NW
Washington, DC 20210
Garris.Melanie@DOL.gov

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