

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 29, 2026

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

v.

THE MONARCH CEMENT COMPANY

Docket No. CENT 2025-0331  
A.C. No. 14-00124-618136

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 July 21, 2025, the Commission received from The Monarch Cement Company (“Monarch Cement”) 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).

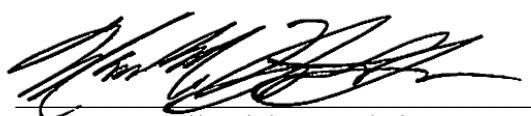
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on April 28, 2025, and became a

final order of the Commission on May 28, 2025. On July 15, 2025, MSHA sent Monarch Cement a delinquency letter. Monarch Cement asserts that the proposed assessment was “set aside” because all personnel involved in processing the assessment were consumed with an MSHA inspection occurring at the time. The Secretary opposes the request to reopen.

The Commission has made it clear that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010); *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009); *Pinnacle Mining Co.*, 30 FMSHRC 1066, 1067 (Dec. 2008); *Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062 (Dec. 2008).

MSHA inspections are a routine occurrence in mines and do not alone justify neglect in processing an assessment. *Compare CML Metals Corp.*, 37 FMSHRC 2527, 2528 (Nov. 2015) (denying a motion to reopen where the failure to designate a safety person to handle routine MSHA enforcement matters represented an inadequate internal processing system), *with Cranesville Aggregates*, 45 FMSHRC 811, 812 (Sept. 2023) (reopening where the failure to contest was the result of a coincidental series of personnel issues and unlikely to recur), and *Naselle Rock & Asphalt Co.*, 43 FMSHRC 311, 312 (June 2021) (reopening a contest filed one day late due to unusual pandemic-related circumstances). To the contrary, operators are expected to ensure appropriate procedures are in place to handle recurring and expected obligations under the Mine Act. Failure to do so indicates an inadequate internal processing system. *See, e.g., Cumberland Contura, LLC*, 40 FMSHRC 1129, 1130 (Aug. 2018) (failure to properly train employees indicates an inadequate internal processing system); *TM Crushing, LLC*, 47 FMSHRC 302, 303 (Apr. 2025) (noting the Secretary’s argument that lack of available resources and training during staffing changes indicates an inadequate internal processing system).

Accordingly, we deny Monarch Cement’s motion.



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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, concurring:

I write to agree 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 denies reopening in its opinion because the operator has not alleged good cause or provided a factual accounting for its failure to timely contest the penalties. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority in denying reopening in this matter.



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Moshe Z. Marvit, Commissioner

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