

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 31, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. PENN 2022-0105
ADMINISTRATION (MSHA)	:	A.C. No. 36-00111-552721
	:	
v.	:	
	:	
R.E. PIERSON MATERIALS CORP.	:	

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Act”). On July 19, 2022, the Commission received from R.E. Pierson Materials Corp. (“R.E. Pierson”) a motion seeking to reopen the captioned case, which had become a final order of the Commission pursuant to section 105(a) of the Act, 30 U.S.C. § 815(a).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on April 13, 2022, and became a final order of the Commission on May 13, 2022. MSHA issued a delinquency notice to the operator on June 28, 2022.

R.E. Pierson’s motion, filed by counsel, states that timely contest was not filed because the operator mistakenly failed to forward the assessment to counsel’s office.¹ However, in a letter attached to the motion, the mine’s operations manager states that the failure to timely file contest “was due to a clerical issue *in the coun[s]el’s office.*” Ex. 1 (emphasis added).

¹ Specifically, the motion to reopen states:

The attached Letter from Mine Operations Manager . . . states . . . due to a clerical error in their office, the proposed assessment was not forwarded to outside counsel along with the citations in time to file the contest

The citations were later forwarded to undersigned counsel for review, but the proposed assessments were not included in the email transmission due to clerical error.

The party seeking to reopen a final order bears the burden of showing that it is entitled to such relief through a detailed explanation of its failure to timely contest the penalty or answer the Secretary's petition. *See, e.g., Dynamic Energy, Inc.*, 39 FMSHRC 1560, 1561 (Aug. 2017). Absent further explanation, there appears to be an inconsistency between the representations made by counsel in the motion and the representations made by the mine's operations manager in the attached letter. Namely, counsel asserts that the mine operator made a mistake, while the mine operator asserts that the mistake occurred in counsel's office.


In light of the identified discrepancy, the parties are hereby **ORDERED TO SHOW CAUSE** within 30 days of the date of this order why this proceeding should not be dismissed. In responding to this order, R.E. Pierson and its counsel should provide a uniform and detailed explanation of the failure to timely contest the proposed penalty. If no response is filed, the final order will not be reopened.



Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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