

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

**September 22, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. PENN 2022-0105
ADMINISTRATION (MSHA)	:	A.C. No. 36-00111-552721
	:	
v.	:	Docket No. PENN 2022-0106
	:	A.C. No. 36-07480-551092
R.E. PIERSON MATERIALS CORP.	:	

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

**ORDER**

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On July 19, 2022, the Commission received from R.E. Pierson Materials Corp. (“R.E. Pierson”) two motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).<sup>1</sup>

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

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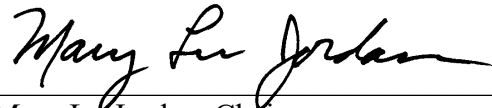
<sup>1</sup> The operator submitted its motion to reopen in PENN 2022-0105 in response to the Commission’s August 31, 2023 Order to Show Cause. For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers PENN 2022-0105 and PENN 2022-0106 because they involve similar factual and procedural issues. 29 C.F.R. § 2700.12.

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 for PENN 2022-0105 was delivered on April 13, 2022, and became a final order of the Commission on May 13, 2022. MSHA also issued a delinquency notice to the operator on June 28, 2022. Regarding PENN 2022-0106, MSHA records indicate that the proposed assessment was delivered on March 18, 2022, and became a final order of the Commission on April 18, 2022. MSHA issued a delinquency notice on June 2, 2022.

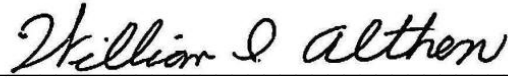
R.E. Pierson admits that it received the proposed assessments at issue. However, it asserts that the mine’s administrative staff failed to forward the proposed assessments to the Mine Operations Manager for review and processing, due to clerical errors in processing the mail. According to R.E. Pierson’s Mine Operations Manager, the operator discovered the errors only after receiving MSHA’s delinquency notices. The operator then contacted its outside counsel to submit the motions to reopen. R.E. Pierson also asserts that it has taken corrective measures to prevent any future occurrence of this error. The Secretary does not oppose the requests to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed R.E. Pierson's requests and the Secretary's responses, we find that the operator inadvertently failed to forward the contest forms to the mine's management. In the interest of justice, we hereby reopen these matters and remand them 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.



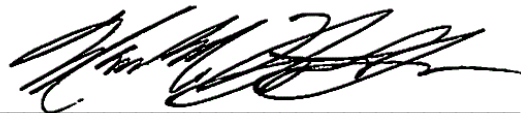
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Mary Lu Jordan, Chair



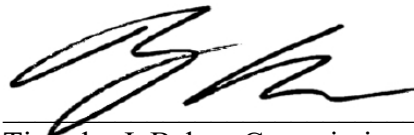
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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner



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Timothy J. Baker, Commissioner

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