

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 7, 2026

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

v.

NALLY & HAMILTON ENTERPRISES,
INC.,

Docket No. KENT 2026-0007
A.C. No. 15-19931-615751

Docket No. KENT 2026-0011
A.C. No. 15-19931-617725

Docket No. KENT 2026-0008
A.C. No. 15-19931-617722

Docket No. KENT 2026-0010
A.C. No. 15-19931-619943

Docket No. KENT 2026-0009
A.C. No. 15-19931-617727

Docket No. KENT 2026-0003
A.C. No. 15-19931-619945

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

ORDER

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

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On November 18, 2025, the Commission received from Nally and Hamilton Enterprises, Inc. (“Nally”) six 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).¹

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).

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket Nos. KENT 2026-0007, KENT 2026-0011, KENT 2026-0008, KENT 2026-0010, KENT 2026-0009, and KENT 2026-0003, involving similar procedural issues. 29 C.F.R. § 2700.12.

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 assessments were successfully delivered to Nally’s address of record. The proposed assessments in KENT 2026-0003 and KENT 2026-0010 were delivered on May 12, 2025 and became final orders of the Commission on June 11, 2025. The proposed assessment in KENT 2026-0007 was delivered on March 10, 2025 and became a final order of the Commission on April 9, 2025. The proposed assessments in KENT 2026-0008, KENT 2026-0009, and KENT 2026-0011 were delivered on April 16, 2025 and became final orders of the Commission on May 16, 2025.

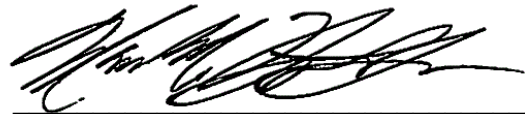
Nally concedes that the proposed assessments were received at the mine and that mine personnel determined that a hearing should be requested to contest the citations and assessments. Nally asserts that the requests to contest were sent to counsel via email but that the requests were “not received and/or initially overlooked.” Further, the operator states that it did not know of the failure to timely contest until its counsel performed an audit of the status of the case upon a request from mine management. The Secretary opposes the request to reopen and notes that delinquency notices were mailed to the operator in May and July of 2025.

The Commission has made clear that an operator has not established grounds for reopening where the failure resulted from an inadequate or unreliable internal processing system. *See, e.g., Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009). Here, messages to counsel concerning proposed penalties were either overlooked or did not reach their intended recipient for a period of three months. The operator has provided no explanation for the prolonged communications failure. As such, we must conclude that Nally lacked any procedure for reliable communication between management and counsel which represents an inadequate or unreliable internal processing system. *Overton Sand & Gravel Co.*, 34 FMSHRC 1053, 1054-55 (May 2012).

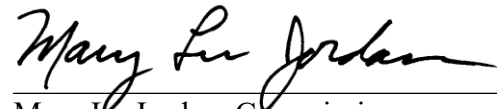
Moreover, the operator has failed to adequately explain why it took so long to file motions to reopen in these matters. Delinquency letters were sent to Nally in May and June of 2025. However, the motions to reopen were not filed until November. In considering whether an operator has unreasonably delayed in filing a motion to reopen, we find relevant the amount of time that has passed between an operator’s receipt of a delinquency notice and the operator’s

filing of its motion to reopen. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC at 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request). Having failed to provide an explanation of why the motion to reopen was not filed within thirty days of receipt of the delinquency notice provides alternative grounds to deny Nally's motions.

Having reviewed Nally's requests and the Secretary's response, we conclude that Nally has failed to establish good cause for reopening the proposed penalty assessments and deny its motion to reopen with prejudice. Accordingly, these cases are dismissed.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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