

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 3, 2026

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

v.

PETE LIEN & SONS, INC.

Docket No. CENT 2025-0105
A.C. No. 39-00925-611616

BEFORE: Rajkovich, Chair; Jordan, and Baker, 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. (2024) (“Mine Act”). On January 22, 2026, the Commission received from Pete Lien & Sons, Inc. (“PLSI”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On April 14, 2025, the Chief Administrative Law Judge issued an Order to Show Cause in response to PLSI’s perceived failure to answer the Secretary of Labor’s February 11, 2025, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on May 15, 2025, when it appeared that the operator had not filed an answer within 30 days.

PLSI asserts that it did not receive any notification of the Order to Show Cause. It further asserts that it believed it had taken the appropriate actions and was waiting for the matter to be assigned to a Judge and set for hearing. The operator explains that it promptly filed its Answer to the Penalty Petition with MSHA on February 12, 2025.¹ When it appeared that settlement negotiations had reached an impasse, the operator asked the assigned Conference Litigation Representative (“CLR”) for guidance, and the CLR explained that a Judge would be assigned and would issue a Pre-Hearing Order.

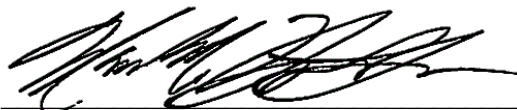
The Secretary takes no position regarding PLSI’s motion. Significantly, the Secretary states that he *also* did not receive timely notice of the default. He explains that the assigned CLR

¹ PLSI’s motion suggests it may not understand that the Commission is a separate entity from the Department of Labor. Filings in Commission proceedings (including Answers to the Secretary’s Penalty Petition) must be submitted *to the Commission*. 29 C.F.R. §§ 2700.5, 2700.29.

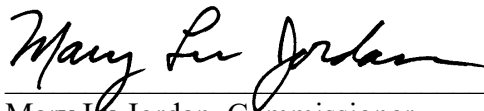
did not receive the Order to Show Cause until July 24, 2025, after contacting a Commission employee regarding the status of the proceeding. The Secretary notes that the operator seems to have “some misunderstanding of MSHA and the Commission’s respective roles,” but also acknowledges that the Commission’s “apparent failure to serve the April 14, 2025, Order to Show Cause” may have caused some confusion. Sec’y Resp. at 3.

A Judge’s jurisdiction over a proceeding terminates when a default occurs. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a Judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1).

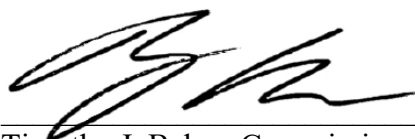
In light of the parties’ representations, it appears that the Order to Show Cause was not properly served on PLSI and therefore did not result in a final order of default. Accordingly, the operator’s motion is denied as moot. *Cf. Material Sand & Stone Corp.*, 48 FMSHRC 184, 185 (Apr. 2026). This case remains open and 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

Distribution:

Grant Neff
Senior Safety Manager
Pete Lien & Sons, Inc.
P.O. Box 440
Rapid City, SD 57709-0440
gneff@petelien.com

Thomas A. Paige, Esq.
Alexandra J. Gilewicz, Esq.
Jennifer A. Ledig, 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
gilewicz.alexandra.j@dol.gov
ledig.jennifer@dol.gov

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

Acting Chief Judge David P. Simonton
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
dsimonton@fmshrc.gov