

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 18, 2026

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

v.

SOUTHERN STONE COMPANY

Docket No. CENT 2026-0219
A.C. No. 23-00758-637101

Docket No. CENT 2026-0220
A.C. No. 23-00758-638928

BEFORE: Rajkovich, Chair; Jordan, 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. (2024) (“Mine Act”). On June 22, 2026, the Commission received from Southern Stone Company (“Southern Stone”) 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).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).

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

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket Nos. CENT 2026-0219 and CENT 2026-0220, involving similar procedural issues. 29 C.F.R. § 2700.12.

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 in CENT 2026-0219 was mailed on March 11, 2026, but was never delivered to the operator or his agent. Instead, the proposed assessment was forwarded to an unknown address, ultimately arriving at a North Houston, Texas distribution center where the postal records end. The Secretary did not attempt redelivery and instead deemed the assessment to be a final order of the Commission effective April 24, 2025. In CENT 2026-0220, MSHA records show that the proposed assessment was delivered to Southern Stone’s in-house counsel on April 13, 2026 and became a final order of the Commission on May 13, 2026.

Southern Stone asserts during the relevant time, assessments were directed to the attention of the company’s in-house counsel.² Although Southern Stone intended to contest the penalties, the in-house counsel, for reasons unknown, did not file the contest. In late May 2026, Southern Stone retained an outside firm to represent it in certain MSHA matters. The outside firm conducted an audit of outstanding penalties on MSHA’s Mine Data Retrieval System (“MDRS”) and discovered that the contest in CENT 2026-0220 was due on June 8, 2026. Southern Stone filed a contest the same day but MSHA rejected the contest for being filed untimely.³ The audit also found that a number of other items had not been properly addressed by in-house counsel. As a result, the operator terminated its employment relationship with the in-house counsel and has updated its address of record so that proposed assessments are sent directly to the mine.

Having reviewed Southern Stone’s request and the Secretary’s response, we conclude that the proposed penalty assessment in CENT 2026-0219 did not become a final order of the Commission because Southern Stone did not receive the proposed assessment. *See* 29 C.F.R. § 2700.26 (“[a] person has 30 days *after receipt* of the proposed penalty assessment within which to notify the Secretary that he contests the proposed penalty assessment.”) (emphasis added); *see also* 30 U.S.C. § 815(a). It is uncontroverted that the proposed assessment was never delivered to the operator or its in-house attorney. The fact that the proposed assessment was forwarded to another address is irrelevant to our analysis where service does not appear to have ever been attempted.

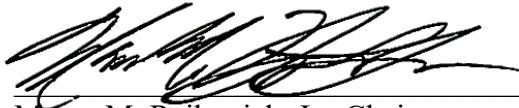
Accordingly, Southern Stone’s motion to reopen CENT 2026-0219 is moot, and this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.

² On July 27, 2026, Southern Stone filed a Motion for Leave to file a Reply to the Secretary’s opposition in each case. We have “encouraged parties seeking reopening to provide further information in response to pertinent issues raised in the Secretary’s response.” *Banner Blue Coal Co.*, 32 FMSHRC 68, 70 n.1 (Jan. 2010). Accordingly, the motion is granted.

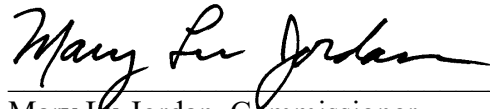
³ MSHA subsequently corrected its records on the MDRS to reflect the correct final order date.

As to CENT 2026-0220, we find that Southern Stone has provided good cause for reopening this matter. The failure to timely contest appears to be attributable to a problematic employee and confusion caused by a mistake on MSHA's MDRS, not inadequate internal procedures or safeguards. We note that shortly after the in-house counsel failed to timely contest the penalties, the operator hired an external firm to audit its outstanding matters with MSHA and took decisive measures to ensure that such a mistake would not be repeated. *See Leesville Land, LLC*, 46 FMSHRC 89 (Feb. 2024) (reopening after the operator replaced an inexperienced safety director who had failed to timely contest proposed assessments). Moreover, the Commission has previously held that "[m]otions to reopen received within 30 days of an operator's receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time." *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, Southern Stone learned the assessment had become final on June 12, 2026, and moved to reopen ten days later.

In the interest of justice, we hereby reopen CENT 2026-0220 and remand it 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 petitions for assessment of penalties within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

Distribution:

Nicholas W. Scala, Esq.
Emily Toler Scott, Esq.
Conn Maciel Carey LLP
5335 Wisconsin Ave NW, Suite 660
Washington, DC 20015
nscala@connmaciel.com
escott@connmaciel.com

Thomas A. Paige, Esq.
Jennifer A. Ledig, Esq.
Marcus W. Andrews, 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
ledig.jennifer.a@dol.gov
Andrews.marcus.w@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