

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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August 20, 2026

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

v.

TRI-STATE RIVER PRODUCTS INC.

Docket No. PENN 2026-0040
A.C. No. 36-04665-623793

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 February 26, 2026, the Commission received from Tri-State River Products (“Tri-State”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

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 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 was mailed on July 3, 2025. On July 11, 2025, according to United States Postal Service (“USPS”) tracking records, the postal service made an initial attempt to deliver the assessment to the operator. The postal service left notice of its attempt to deliver. On July 16, 2025, the postal service delivered a reminder to reschedule delivery. On July 27, 2025, the package was designated as “Unclaimed” and was returned to the Secretary. On November 19, 2025 the Secretary mailed Tri-State a delinquency notice, which stated that the civil penalty had become a final Order on September 1, 2025.¹ Sec’y Ex. E.

In its motion to reopen, Tri-State notes that the assessment was not delivered and maintained that it “had no control over mail delivery.” Mot. at 1. It further stated that it only became aware of the assessments in December 2025. *Id.* The Secretary opposes reopening the final order, arguing that Tri-State has not adequately explained its delay in seeking to reopen this matter after discovering that it was delinquent.

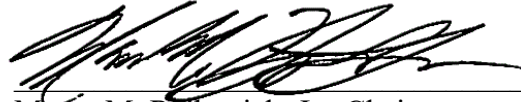
As an initial matter, we find that the USPS tracking records do not support the operator’s argument that it lacked control over its ability to receive mail. The USPS tracking records indicate that the postal service twice left notice with the operator requesting that it reschedule delivery.² Nevertheless, the package remained at the post office from July 11 until July 27, 2025, when it was returned to the Secretary. The Secretary maintains that he has repeatedly delivered proposed assessments to the operator at its Coraopolis address. The Secretary attributes the operator’s failure to collect and sign for the certified mail on this occasion to inadequate procedures.

Moreover, Tri-State has failed to explain why it took so long to file its motion to reopen. The operator first discovered the delinquent penalties in December 2025. The Commission received the motion to reopen on February 26, 2026. The Commission has consistently held that when an operator moves to reopen an assessment more than 30 days after learning that the assessment was not timely contested, the operator must provide a justification for the delay. *See Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Motions that lack a factual accounting of the operator’s failure to timely file are deficient. *See, e.g., Potter South East, LLC*, 45 FMSHRC 152, 153-54 (Mar. 2023). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC 747, 748 (Aug. 2023).

¹ The Mine Act provides that “[r]efusal by the operator or his agent to accept certified mail concerning a citation and a proposed assessment of penalty under this subsection shall constitute receipt thereof within the meaning of this subsection.” 30 U.S.C. § 815(b).

² We have looked disfavorably on motions to reopen where the operator has actively refused service of the proposed assessment, finding that a “party which refuses to accept certified mail from MSHA will most likely be unable to establish good cause [to reopen].” *Munn Road Sand & Gravel*, 26 FMSHRC 383, 384 (May 2004).

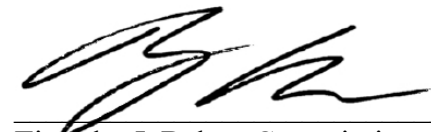
Tri-State has failed to provide an adequate explanation for its delay in seeking relief. *See Select Materials*, 45 FMSHRC 1011 (Dec. 2023) (denying motion to reopen where USPS had left multiple attempt notices). Furthermore, Tri-State has not established good cause for its failure to timely contest the proposed assessment. For these reasons, its motion to reopen is denied.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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