

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 7, 2026

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

v.

ASARCO LLC

Docket No. WEST 2025-0295
A.C. No. 02-00135-620287

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 June 27, 2025, the Commission received from ASARCO LLC (“ASARCO”) 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), an operator who wishes to contest a proposed penalty must notify the Secretary of Labor within 30 days of receipt of the proposed assessment. If the operator fails to do so, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held that, in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders. *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). In evaluating such requests, the Commission is guided by Rule 60(b) of the Federal Rules of Civil Procedure, under which a party may obtain relief from a final order based on mistake, inadvertence, excusable neglect, or other justifiable reason. *See* 29 C.F.R. § 2700.1(b). Reopening is an extraordinary remedy, and the party seeking relief bears the burden of demonstrating entitlement to such relief.

MSHA records indicate that the proposed assessment was delivered to ASARCO on May 16, 2025, and became a final order of the Commission on June 16, 2025. ASARCO asserts that its failure to timely contest the assessment resulted from delayed receipt of the proposed penalty and mishandling of the assessment during a management transition. The Secretary opposes the request, arguing that ASARCO has not demonstrated good cause for its failure to timely respond.

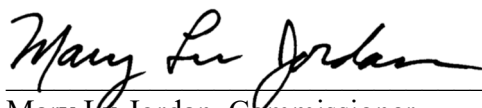
Mistakes related to personnel transition may constitute good cause for a failure to timely file, provided the operator can sufficiently demonstrate that the failure was not the result of inadequate or unreliable office procedures. *See, e.g., Cranesville Aggregates*, 45 FMSHRC 811, 812 (Sept. 2023); *cf. Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012) (“[t]he Commission has made it clear that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment.”).

Here, the circumstances demonstrate that the failure to timely file was the result of a short staffing change, rather than inadequate procedures. Because of this staffing change, the proposed assessment was delivered to the Safety Manager on May 26, 2025. The Safety Manager filed an email contest with MSHA on June 18, 2025, only two days after the penalties became a final order. Furthermore, the operator proactively filed its motion to reopen three days after the discovery of the error, demonstrating that the operator is making a good faith effort to comply with the Commission’s procedures. *See Explosive Contractors, Inc.*, 46 FMSHRC 965, 966 (Dec. 2024) (citations omitted).

Having reviewed ASARCO’s request and the Secretary’s response, in the interest of justice, we hereby reopen this matter and remand it to the Acting 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

Distribution:

Angel Lopez
Safety Manager
ASARCO Mission
4201 W. Pima Road
Sahuarita, AZ 85629
Angel.lopez@asarco.com

Jennifer A. Ledig, Esq.
Thomas A. Paige, 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
Ledig.jennifer@dol.gov
Paige.Thomas.a@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