

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 29, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

CSI SANDS, NE, LTD.

Docket No. YORK 2026-0007
A.C. No. 30-03261-605639

Docket No. YORK 2026-0008
A.C. No. 30-03261-603089

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 November 13, 2025, the Commission received from CSI Sands, NE, Ltd. (“CSI”) motions seeking to reopen two 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 proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

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

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessments were delivered on October 15, 2024 (YORK 2026-0007) and October 19, 2024 (YORK 2026-0008), and became final orders of the Commission on November 14, 2024 and November 18, 2024, respectively. On December 30, 2024 and January 10, 2025, MSHA mailed delinquency notices to the operator in both dockets (the Secretary characterizes the delinquency notices as “demand letters”).

The operator claims that it has no record of receiving the assessments, and that it did not become aware of the assessments until receiving a collection notice on September 16, 2025. However, the operator concedes that “it is possible that [the] assessment[s] arrived at the plant but went unnoticed and uncontested” because at the time of delivery, the mine lacked a plant manager, and other members of management were preoccupied. MTR at 3 (YORK 2026-0007), MTR at 2-3 (YORK 2026-0008). Specifically, the operator claimed that the plant manager, who normally handled assessments, left the mine on September 13, 2024, and her replacement was not hired until December 2, 2024. Meanwhile, the operator claimed that starting in July 2024, other members of management were busy trying to contact a non-responsive contractor, hired to repair a roof collapse. The operator further alleges that in September 2024, MSHA began section 110(c) investigations into the operator’s management, and on November 12, 2024, MSHA made an audit request to the operator.

The Secretary opposes the motions to reopen, asserting that the assessments were properly delivered to the operator, and that the operator had replaced its plant manager before receiving the delinquency notices. The Secretary also emphasized the operator’s lengthy delays in filing the motions to reopen after the delinquency notices were mailed to the operator.

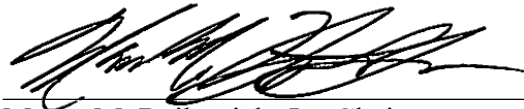
In *H&K Materials, Inc.*, 33 FMSHRC 2709, 2711 n.1 (Nov. 2011), the Commission held that “[i]t is presumed that a properly mailed letter reached its destination.” We find that the operator fails to rebut that presumption. MSHA asserts that it properly mailed both assessments and both delinquency notices to the operator’s address of record. There is no indication that the postal service was unable to deliver the assessments or delinquency notices. Therefore, as the assessments and delinquency notices were properly mailed, we must presume that they properly reached the operator. Indeed, the operator concedes that the assessments might have been properly delivered but went unnoticed because the operator lacked a plant manager at the time of delivery.

We note that the operator also failed to timely respond to the delinquency notices. 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, the motions to reopen were not filed within a reasonable amount of time but rather, filed ten months after MSHA mailed the delinquency notices. Moreover, we note that the delinquency notices were mailed in late December 2024 and January 2025, after a new plant manager was hired. The operator fails to explain why the new plant manager, hired on December 2, 2024, failed to timely respond to the delinquency notices.

Furthermore, the operator claims that it was preoccupied by a roof repair and an MSHA audit when the assessments were delivered. In the past, the Commission has reopened matters where the operator's internal processing system failed because of a unique occurrence. *Noranda Alumina, LLC*, 39 FMSHRC 441, 444-45 (Mar. 2017). But repairs and maintenance and MSHA enforcement actions are routine actions at a mine, not a unique occurrence. The operator claims that it assumed that the assessments would not be issued until after a resolution of the section 110(c) investigations. However, an adequate internal processing system should be able to process even unexpected assessments that are properly delivered.

In the past, the Commission has denied motions to reopen where the failure to timely contest resulted from an inadequate internal processing system. *Muhlenberg County Coal Res. Inc.*, 46 FMSHRC 852, 854 (Oct. 2024) *citing Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062 (Dec. 2008) (denying motions to reopen when failures to timely contest resulted from inadequate internal processing procedures). We attribute the operator's repeated delays in responding to two assessments and two delinquency notices to an inadequate internal processing system. Because of the operator's repeated delays, the motions to reopen were filed almost a full year after each assessment became a final order of the Commission.

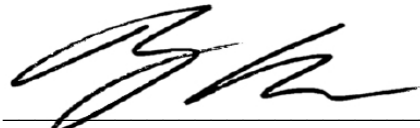
Accordingly, we find that the operator has failed to demonstrate an entitlement to extraordinary relief. Therefore, we deny CSI's motions in each docket.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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