

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**MAR 14 2018**

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

v.

SA RECYCLING

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Docket No. WEST 2017-466-M  
A.C. No. 02-00150-422734

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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. (2012) (“Mine Act”). On May 30, 2017, the Commission received from SA Recycling 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).

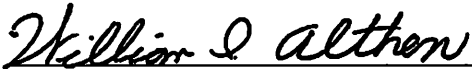
Under section 105(a), an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 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).

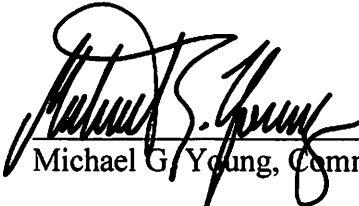
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on December 12, 2016, and

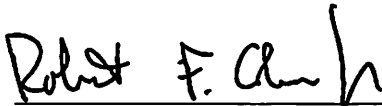
became a final order of the Commission on January 11, 2017. The Secretary mailed a delinquency letter to the operator on February 27, 2017. SA Recycling asserts that its failure to timely respond to the assessment was “an unusual, one time and unanticipated office procedure.” SA Recycling’s facility manager failed to notify the Director of Safety following the MSHA inspection and also failed to forward the assessment. The operator has since misplaced the assessment. The operator claims that its site manager was later reprimanded for this failure and the operator made changes to its office procedures to ensure that the problem does not recur. The Safety Director claims she only received the delinquency letter on April 17, 2017 and immediately contacted MSHA regarding this matter. The operator asserts that it first attempted to receive a new copy of the assessment and underlying citations before filing the request to reopen. SA Recycling has not filed any other motions to reopen with the Commission in the last two years. The Secretary does not oppose the request to reopen.

Having reviewed SA Recycling’s request and the Secretary’s response, we find that the operator inadvertently failed to ensure that the assessment reached the Director of Safety. The responsible party has been reprimanded and the office procedures have been changed. SA Recycling has adequately explained why it did not respond to the Secretary’s delinquency letter within 30 days. In the interest of justice, we hereby reopen this matter 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 a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

  
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William I. Althen, Acting Chairman

  
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Mary Lu Jordan, Commissioner

  
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Michael G. Young, Commissioner

  
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Robert F. Cohen, Jr., Commissioner

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