

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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JUL 10 2017

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
	:	Docket No. PENN 2015-185-M
v.	:	A.C. No. 36-09386-376805
	:	
ORIGINAL FUELS, INC.	:	

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 October 9, 2015, the Commission received from Original Fuels, Inc. (“Original Fuels”) a motion seeking to reopen a penalty assessment proceeding and seeking relief from the Default Order entered against it.

On March 23, 2015, the proposed assessment was delivered to the operator. On March 25, 2015, the operator timely contested the assessment. On April 6, 2015, a Petition for Assessment of Civil Penalty was mailed to the operator’s physical address. The operator did not respond.

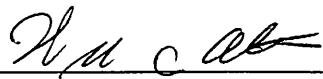
On July 10, 2015, the Chief Administrative Law Judge issued an Order to Show Cause in response to Original Fuels’ failure to answer the Secretary’s Petition. The Order to Show Cause stated that it would become a default order on August 10, 2015, if the operator failed to file an answer to the petition before that date.

The Commission’s records show that the operator timely filed a response to the show cause order on August 4, 2015. The operator’s response to the show cause order clearly sets forth its reasons for contesting the relevant penalties. In its August 4 response to the Commission, the operator further represents that it sent a copy of the letter to the Secretary . See Aug. 4, 2015 Letter.

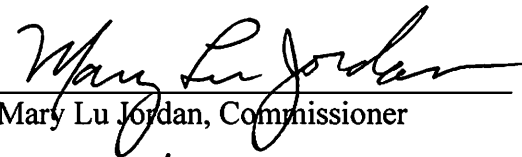
The Secretary opposes the motion to reopen, asserting that the operator failed to timely respond to the petition. In his Opposition to Request to Reopen Penalty Assessment, the Secretary acknowledges the operator’s August 4 response to the show cause order. Sec’y Opp. at 5. Despite this, MSHA proceeded as though the show cause order had become a default order on August 10, 2015, and mailed a delinquency notification to Original Fuels on September 29,

2015. The Secretary does not address the substance of the August 4 letter or its effective response to the Judge's Order to Show Cause.

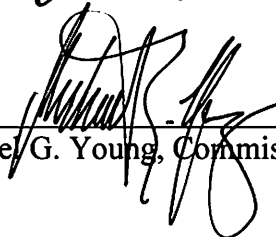
Having reviewed Original Fuels' request and the Secretary's response, we conclude that the operator was not in default under the terms of the Order to Show Cause because it timely complied with the order. *See Vulcan Construction Materials*, 33 FMSHRC 2164 (Sept. 2011). The alleged default is a nullity. Accordingly, the operator's motion to reopen 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.



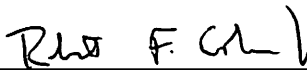
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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