

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

**AUG 03 2017**

|                           |   |                           |
|---------------------------|---|---------------------------|
| SECRETARY OF LABOR,       | : |                           |
| MINE SAFETY AND HEALTH    | : |                           |
| ADMINISTRATION (MSHA)     | : |                           |
|                           | : | Docket No. KENT 2013-1050 |
| v.                        | : | A.C. No. 15-18363-329924  |
|                           | : |                           |
| KENTUCKY FUEL CORPORATION | : |                           |
|                           | : |                           |

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 July 14, 2015, the Commission received from Kentucky Fuel Corporation (“Kentucky Fuel”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On January 23, 2014, the Chief Administrative Law Judge issued an Order to Show Cause in response to Kentucky Fuel’s failure to answer the Secretary of Labor’s October 22, 2013, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on February 24, 2014, when it appeared that the operator had not filed an answer with the Judge within 30 days.

Kentucky Fuels claims that it never received the initial Petition for Assessment of Civil Penalty. Moreover, it claims that it received the Order to Show Cause on January 27, 2014, and promptly filed a response on February 6, 2014. This Response was received by the Commission on February 11, 2014. However, while the Response listed the correct Assessment Control Number, it showed the docket number as “WEVA 2013-1050” rather than “KENT 2013-1050.”

The evidence shows that the operator intended its February 6, 2014, letter to serve as a response to the Order to Show Cause in KENT 2013-1050, but it mistakenly wrote “WEVA” instead of “KENT.” The Commission received Kentucky Fuel’s letter on February 11, 2014, prior to the February 24, 2014, deadline for responding to the Order to Show Cause. Therefore, 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 Constr. Materials*, 33 FMSHRC 2164

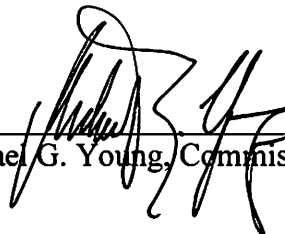
(Sept. 2011). This renders the Default Order a nullity. Accordingly, KENT 2013-1050 is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



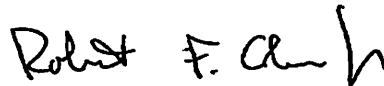
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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