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COMMISSION DECISIONS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

May 13, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. W.G. YATES & SONS CONSTRUCTION CO.	Docket No. SE 2023-0094

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

DECISION

BY: Commissioners Jordan and Baker

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act"), and concerns a citation issued to W.G. Yates and Sons Construction Company ("Yates") by the Department of Labor's Mine Safety and Health Administration ("MSHA"). Yates was contracted by PCS Phosphate & Nutrien ("Nutrien") to perform steel repair work at Nutrien's phosphate mine. During the repair work, molten steel slid into an uncovered drain and ignited the rubber-lining of a discharge pipe. The citation alleged that Yates failed to keep ignition sources and combustible materials separate in violation of the mandatory safety standard at 30 C.F.R. § 56.4500.

After a hearing on the merits of the citation, a Commission Administrative Law Judge found a violation and affirmed the significant and substantial ("S&S") designation.[1] 46 FMSHRC 1057 (Dec. 2024) (ALJ).

Yates filed a petition for discretionary review of the Judge's decision, which we granted. For the reasons which follow, we affirm the decision.

I.

Factual and Procedural Background

The fire occurred in the washer building at the Lee Creek Mine. The facility was not operational at the time of the incident, and the water had been turned off. Previously, raw phosphate ore was washed and screened there.

[1] The S&S terminology is taken from section 104(d)(1) of the Act, which distinguishes as more serious any violation that "could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard." 30 U.S.C. § 814(d)(1).

The incident arose on December 6, 2022, when a miner was using an oxygen acetylene torch to cut steel on the third floor of the building. A heated steel shaving ("slag") from the cut fell into a pan, traveled down a drain, through about ten feet of discharge pipe, and ignited the rubber-lining of the pipe's elbow-joint. Black smoke rose out of the drain and through the corrugated metal floors. Miners discharged six fire extinguishers toward the drain, but the spray could not put out the fire. Nutrien's Emergency Rescue Team arrived in a fire truck and sprayed water into the drain extinguishing the fire. The fire burned for approximately 17 minutes.

Prior to the repairs, Nutrien had issued Yates a "hot work" permit, stating that there were no combustible hazards within a 35-foot radius of the work area.[2] Ex. R-4 at 3.

MSHA Inspector Bryan Lee Deaton, who happened to be at the mine investigating a separate incident, observed "thick, heavy, black" smoke from about three miles away and immediately traveled to the building. Tr. 44. He later issued Yates Citation No. 9633680, alleging a violation of the safety standard at 30 C.F.R. § 56.4500 ("[h]eat sources capable of producing combustion shall be separated from combustible materials if a fire hazard could be created.").

The Judge determined that Yates violated the safety standard, concluding that the heat source was clearly not separated as required. 46 FMSHRC at 1065. The Judge also affirmed the S&S designation and assessed an $800 civil penalty.

On review, Yates argues that the Judge erred in concluding that the rubber-lining in the discharge pipe was a "combustible material" in accordance with 30 C.F.R. § 56.2. Yates also argues that the Judge erred in his S&S analysis, maintaining in part that the smoke did not present a hazard because it was ventilated up and out through the corrugated metal floors.

The Secretary maintains that the Judge's decision is supported by the facts and is consistent with the law. We agree and affirm the decision of the Judge.

II.

Disposition

A. Yates Violated the Requirements of the Safety Standard.

On review, Yates does *not* argue that the Judge erred in finding that the operator failed to "separate" the hot slag and the rubber.[3] 46 FMSHRC at 1065 ("the hot slag made contact with

[2] Nutrien required combustible hazards to be "wet down" or covered with a fire blanket. Yates covered nearby rubber conveyor belts with "fire blankets" and was also using a fire blanket in the immediate area of its cuts.

[3] Accordingly, the Judge's findings that Yates failed to "separate" the heated slag and the rubber is not before us. *See* 30 U.S.C. § 823(d)(2)(A)(iii) ("review shall be limited to the questions raised by the petition."). Before the Judge, Yates had argued that the heat source and rubber were separated in accordance with section 56.4500. Yates Post-Hearing Br. at 14-15.

the rubber lining of the elbow section of the discharge pipe, igniting the fire."); 30 C.F.R. § 56.4500 ("[h]eat sources capable of producing combustion shall be separated from combustible materials if a fire hazard could be created.").

Instead, Yates argues that the rubber-lining in the pipes was not a "combustible material" in accordance with 30 C.F.R. § 56.2 ("material that, in the form in which it is used and under the conditions anticipated, will ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Wood, paper, rubber, and plastics are examples of combustible materials."). PDR at 12-17.

Specifically, Yates contends that the phrase "under the conditions anticipated" in section 56.2 requires that the Secretary demonstrate that an operator was able to anticipate the presence of the combustible material. Yates argues that here it was unable to anticipate the presence of rubber, noting that: Nutrien issued it a "safe work permit" which certified that there were no combustible hazards nearby; the pipe's interior could not be visually observed; no witness at the hearing was aware of the rubber-lining; and Yates had performed similar tasks five times without incident. According to Yates, because the rubber-lining did not fall within the definition in section 56.2, it did not violate the safety standard at section 56.4500.

The Secretary argues that requiring her to demonstrate that the operator had prior knowledge of the combustible material in order to demonstrate a violation of section 56.4500 is inconsistent with the general strict liability framework of the Mine Act.

We agree with the Secretary. Mine operators, including independent contractors performing services at a mine, are strictly liable for violations of mandatory safety standards. The provision in section 110(a) of the Mine Act, 30 U.S.C. § 820(a), that "[t]he operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard . . . shall be assessed a civil penalty by the Secretary . . . ." imposes liability for a violation without regard to fault. *Allied Products Co. v. FMSHRC*, 666 F.2d 890, 893-94 (5th Cir. 1982); *Sewell Coal Co. v. FMSHRC*, 686 F.2d 1066, 1071 (4th Cir. 1982); *Western Fuels-Utah, Inc.*, 10 FMSHRC 256, 260-61 (Mar. 1988), *aff'd on other grounds,* 870 F.2d 711 (D.C. Cir. 1989); *Asarco, Inc*., 8 FMSHRC 1632, 1634-36 (Nov. 1986), *aff'd,* 868 F.2d 1195 (10th Cir. 1989).

The Commission has consistently stated that "[l]ack of knowledge is not a defense to liability in light of the strict liability nature of the regulations." *Nally & Hamilton Entes., Inc*., 33 FMSHRC 1759, 1764 (Aug. 2011) (citing *Rock of Ages Corp. v. Sec'y of Labor*, 170 F.3d 148, 156 (2d Cir. 1999) (holding that Mine Act "imposes strict liability on mine operators . . . regardless of whether the operator has knowledge" of hazard)); *Stillwater Mining Co. v. FMSHRC*, 142 F.3d 1179, 1184 (9th Cir. 1998) ("[k]nowledge and culpability, however, are not relevant to the determination of whether there was a violation. As we have observed, the [Mine Act] imposes 'a kind of strict liability on employers to ensure worker safety"') (citation omitted)). Although irrelevant to a determination of liability, what an operator knew or should have known at the time of the violation is relevant when determining negligence and the civil penalty in accordance with section 110(i) of the Mine Act, 30 U.S.C. § 820(i).

For example, in *Nally and Hamilton*, the Commission concluded that the operator violated a safety standard at 30 C.F.R. § 77.410(c) (requiring that it maintain warning devices in functional condition), because an inspector observed a truck's back-up alarm was not working. 33 FMSHRC at 1763-64. The operator contended that because the alarm was operational when it performed the pre-shift examination, it did not violate the safety standard's requirement. *Id*. at 1761. The Commission concluded "what [the operator] knew at the time the citation was issued is only relevant to determining [the operator's] degree of negligence and the resultant penalty."[4] *Id*. at 1764.

For this reason, we find that the Judge did not err in the case at hand.[5] It would be inconsistent with the strict liability principles of the Mine Act to read "under the conditions anticipated" as requiring the Secretary to demonstrate that the mine operator should have known that rubber was present in order to prove that it was a "combustible material." The phrase "under the conditions anticipated" in section 56.2 is more naturally understood in context with the surrounding language as referring to the work being performed at the mine. Here, that would include the steel repair work. Accordingly, we find the meaning of section 56.2 to be plain.[6] We affirm the Judge's determination of violation.

We reject Yates' argument that our interpretation leads to absurd results and will require operators to disassemble piping systems in search of combustible materials. Section 56.4500 requires "separation" of heat sources from combustible materials. *See* Safety Standards for Fire Prevention and Control at Metal and Nonmetal Mines, 50 Fed. Reg. 4,022, 4,030 (Jan. 1985) ("MSHA intends 'separated' to mean a heat source is either insulated or removed a sufficient distance from combustible material in the areas so that it is no longer constitutes an ignition source."). Yates could have complied with the standard, in this instance, by covering the drain with an insulating fire blanket, as it did with other areas. Tr. 39, 63.

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[4] Similarly, the mandatory safety standard at 30 C.F.R. § 75.202(a) requires that in "areas where persons work or travel [the mine roof] shall be supported." In *Jim Walter Resources*, the Commission interpreted this standard by stating that under "the strict liability approach governing Mine Act violations, the Secretary . . . need only show (1) that the roof fall occurred in an area where persons work or travel and (2) that the roof was not supported to protect persons from hazards related to falls." 37 FMSHRC 493, 495 (Mar. 2015).

[5] The Judge found that Yates' negligence was mitigated by its use of a fire blanket in the immediate cutting area, its lack of knowledge of the rubber-lining, and the fact that the operator had previously performed the same task five times without problems. 46 FMSHRC at 1073. Yates did not appeal the ALJ's negligence determinations.

[6] Where the language of a regulatory provision is clear, the terms must be enforced as they are written unless the regulator clearly intended the words to have a different meaning or unless such a meaning would lead to absurd results. *Jim Walter Res., Inc*., 28 FMSHRC 983, 987 (Dec. 2006) (quoting *Dyer v. United States*, 832 F.2d 1062, 1066 (9th Cir. 1987) (citation omitted)); *Alan Lee Good*, 23 FMSHRC 995, 997 (Sept. 2001); *Lopke Quarries, Inc*., 23 FMSHRC 705, 707 (July 2001); *Jim Walter Res., Inc*., 19 FMSHRC 1761, 1765 (Nov. 1997).

B. The Violation is Significant and Substantial.

The Judge concluded that the violation was S&S. 46 FMSHRC at 1066-1071 (the violation caused a fire, and the fire was reasonably likely to result in a reasonably serious injury). In reaching his determination, the Judge applied the Commission's S&S test set forth in *Peabody Midwest Mining*, 42 FMSHRC 379, 383 (June 2020).

After the Judge issued his decision, the Commission overturned the *Peabody* S&S test. In *Consol Pennsylvania Coal Company*, 47 FMSHRC 793, 816-820 (Sept. 2025), the Commission stated that, moving forward, to substantiate an S&S designation, the Secretary must demonstrate that the violation: (1) could make a significant and substantial contribution to a mine hazard and (2) that miners are exposed or would be exposed to that hazard during continued mining operations.[7]

On review, Yates argues that the Judge's S&S findings are not supported by substantial evidence in the record.[8] PDR at 22-28.

We conclude that the record evidence supports the Judge's findings. For purposes of review, we consider the Judge's S&S findings under the *Consol* framework.[9] First, the *Consol* test asks: could the violation make a significant and substantial contribution to a mine safety hazard? Here, it is axiomatic that the violation—contact between a heat source and a combustible material—*caused* a fire. Inspector Deaton testified that the fire produced "thick, heavy, black smoke." Tr. 44. One of the miners stated to Inspector Deaton he had to leave the building because "the smoke was too bad." Tr. 69. Nutrien's Safety Specialist Johnny O'Neal

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[7] *See* 30 U.S.C. § 814(d)(1) (distinguishing as more serious any violation that "could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard.").

[8] When reviewing a Judge's factual determinations, the Commission is bound by the terms of the Mine Act to apply the substantial evidence test. 30 U.S.C. § 823(d)(2)(A)(ii)(I). "Substantial evidence" means "'such relevant evidence as a reasonable mind might accept as adequate to support [the Judge's] conclusion.'" *Rochester & Pittsburgh Coal Co.,* 11 FMSHRC 2159, 2163 (Nov. 1989) (quoting *Consolidated Edison Co. v. NLRB,* 305 U.S. 197, 229 (1938)).

[9] The parties' briefs concern the Judge's application of the *Peabody* test. Our concurring colleague also applies the *Peabody* test. In doing so, the concurrence argues that the *Consol* test would make "virtually all non-technical violations could be designated as S&S, which is definitely contrary to the Mine Act's graduated enforcement scheme." Slip op. at 9. In *Consol*, the majority expressly disavowed any intent to increase (or decrease) the number of S&S citations, but instead sought to fairly apply the plain language of the Act. *Consol*, 47 FMSHRC at 824. As the analysis *infra* will demonstrate, the *Consol* analysis is a fact-based inquiry into the conditions cited, rather than an automatic finding. What's more, we note further that the overturned *Peabody* analysis preferred by the concurrence collapsed the graduated enforcement scheme set forth in the Mine Act by conflating S&S with the statutory concept of imminent danger. *See Consol,* 47 FMSHRC at 819-820.

corroborated Inspector Deaton's testimony, noting that the fire produced "a good amount of . . . black smoke." Tr. 106, 111. O'Neal also testified that he believed that the black smoke indicated that it was a hot fire. Tr. 110. Substantial evidence supports the Judge's finding that the violation contributed to a hazard.[10]

Second, the *Consol* test asks: were miners exposed, or would miners be exposed, to hazards during continued mining operations? Substantial evidence demonstrates that miners were exposed to hazards. 46 FMSHRC at 1069 (the Judge found that "it is reasonably likely that the fire could have resulted in a miner inhaling smoke and, or toxic fumes, enduring burns from the fire's heat, or falling into the openings in the third floor due to obscured vision from the thick, black smoke."). Approximately 14 miners were working in the building at the time the fire occurred. Ex. P. Miners attempted to put out the fire with fire extinguishers, putting themselves in proximity to the fumes. Tr. 61 (Inspector Deaton testified that "[t]he smoke produced from the rubber burning is a toxic fume. It can result in lung injuries."). The Commission has recognized that common sense indicates that a fire presents a risk of smoke or gas inhalation to miners. *See The American Coal Co*., 39 FMSHRC 8, 18 (Jan. 2017) (citation omitted). Additionally, the fire could have also resulted in burn injuries, or the smoke could have impaired a miner's vision, contributing to trip and fall hazards which were especially concerning because there were openings in the floor. Tr. 61-62.[11]

Yates argues that the Judge should have credited Superintendent Matt Rousch's testimony over Inspector Deaton's testimony. Rousch testified that miners were not exposed to

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[10] Yates argues that the Judge erred when he failed to consider that, given the circumstances, the occurrence of a fire was improbable. PDR at 17-22. We disagree. It is not error for a Judge to consider that a hazard *actually occurred*, when considering whether a violation would contribute to a mine safety hazard.

[11] Our concurring colleague cites to Merriam-Webster's Dictionary for the proposition that an analysis of the term "hazard" requires a finding that miners were exposed to an injury. However, this argument simultaneously misreads the dictionary and the statute. Merriam-Webster's Dictionary defines the term "hazard" as a "source of danger" and "danger" as "exposure or liability to injury, pain, harm, or loss." *Merriam-Webster's Online Dictionary*, https://www. Merriam-webster.com/dictionary/danger and https://www.merriam-webster.com/dictionary/hazard (last accessed May 8, 2026). By omitting the portions of the definition of the term "danger" after the word "injury" that are linked by the disjunctive "or" the concurrence implies that a danger necessarily indicates exposure to an injury. But the full definition makes clear that a danger can also be exposure to "harm." Our analysis above, considering the particular facts and circumstances cited, expressly analyzes miners' exposure to the harms of smoke inhalation and fire. This is a fact-specific analysis of the actual conditions present and miners' exposure to those conditions. Further, as set forth in detail by the majority in *Consol*, the word "injury" is not included in section 104(d) of the Mine Act, despite the fact that Congress freely used that term when it intended to do so. *Consol*, 47 FMSHRC at 818, n.22 (Sept. 2025). We decline, again, to add words not included into the Act.

hazards because the smoke was ventilated up and out through the facility's grated floors.[12] PDR at 24; Tr. 150-55.

We decline to reweigh the evidence or rely upon alternative testimony in the record. A Judge's credibility determinations are entitled to great weight and may not be overturned lightly. *Farmer v. Island Creek Coal Co*., 14 FMSHRC 1537, 1541 (Sept. 1992); *Penn Allegh Coal Co*., 3 FMSHRC 2767, 2770 (Dec. 1981) ("to the extent the [J]udge's conclusion reflects a credibility determination . . . that credibility determination should be given deference."). The Commission has also recognized that, because the Judge "has an opportunity to hear the testimony and view the witnesses[,] he [or she] is ordinarily in the best position to make a credibility determination." *In re: Contests of Respirable Dust Sample Alteration Citations*, 17 FMSHRC 1819, 1878 (Nov. 1995) (quoting *Ona Corp. v. NLRB*, 729 F.2d 713, 719 (11th Cir. 1984)), *aff'd sub nom. Sec'y of Labor v. Keystone Coal Mining Corp*., 151 F.3d 1096 (D.C. Cir. 1998).

Yates further maintains that the fact that no miners were injured in the event contradicts the Judge's findings. PDR at 22-27. We reject this argument. The Commission has never required the Secretary to demonstrate that miners were actually injured in order to demonstrate that a violation was S&S. *See Youghiogheny & Ohio Coal Co*., 9 FMSHRC 673, 678 (Apr. 1983).

In summary, we conclude that substantial evidence in the record supports the Judge's findings and demonstrates that the violation was S&S pursuant to the *Consol* test.

III.

Conclusion

For the reasons discussed above, we affirm the Judge's decision.

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

[12] Additionally, Yates argues that miners were too far removed from the discharge pipe to be exposed to the smoke. Yates also argues that the risks of burn hazards and trip and fall hazards were remote; the pipe was inaccessible and holes in the floor were inaccessible due to barricades.

Chair Rajkovich, concurring:

I concur with the majority in affirming Citation No. 9633680. The citation alleges that Yates failed to separate a heat source from a combustible material, in violation of 30 C.F.R. § 56.4500. On appeal, Yates claims that the rubber lining at issue was not a combustible material.

A combustible material is one that, "in the form in which it is used and under the conditions anticipated, will ignite." 30 C.F.R. § 56.2. Rubber is listed as an example. *Id.* Here, the rubber ignited in the form in which it was used, and nothing in the record suggests that this occurred under unanticipated conditions. The Judge properly concluded that the rubber lining was a combustible material. As that was Yates' sole basis for appealing the fact of the violation, I therefore affirm the violation.

Yates argues that it did not "anticipate" the presence of a combustible material. However, I agree with the majority that "under the conditions anticipated" more reasonably refers to the work being performed at the mine, *i.e.,* expected working conditions, rather than an operator's actual knowledge. Slip op. at 4. Here, the anticipated conditions were steel welding work in a washer building with the water turned off, and the ignition occurred under those conditions.

With respect to the "significant and substantial" ("S&S") analysis, I reject the majority's *Consol* test for the reasons set forth in *Canyon Fuel Co., LLC*, 48 FMSHRC 2, 22-23 (Jan. 2026) (Rajkovich, concurring in part). I would review this matter under the Commission's traditional *Mathies/Peabody* test, which provides a more complete analysis.

Under the Commission's traditional test, a violation is properly designated as S&S if, "based upon the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to [by the violation] will result in an injury or illness of a reasonably serious nature." *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (Jan. 1984); *see also Peabody Midwest Mining, LLC*, 42 FMSHRC 379 (June 2020) (refining *Mathies* test). The *Consol* test explicitly removes any consideration of injury from the analysis, narrowing the focus to whether a miner was exposed to a "danger" or "hazard." *Consol Pennsylvania Coal Company*, 47 FMSHRC 793, 818 (Sept. 2025).

But how are we to decide if conditions are dangerous or hazardous without considering the likelihood of injury? A hazard is simply a "source of danger," while danger is defined as "exposure or liability to injury." *Merriam-Webster's Online Dictionary*, https://www. Merriam-webster.com/dictionary/danger and https://www.merriam-webster.com/dictionary/ hazard (last accessed May 8, 2026). We must determine what *effect* a cited condition will have, to know if it is hazardous. A violation only contributes to a *hazard*, i.e., a *danger* to miners, if it could expose miners to *injury*. If the concept of injury is removed from the definition of a hazard, as proposed in *Consol*, then as previously noted, "virtually all non-technical violations could be designated as S&S, which is definitely contrary to the Mine Act's graduated enforcement scheme." *Canyon Fuel*, 48 FMSHRC at 23. Accordingly, the Commission's traditional test, which considers likelihood and likely severity of injury, provides a more complete analysis of the relevant hazards.

Here, although the Judge properly applied the *Mathies/Peabody* framework, I find some weaknesses in the Judge's analysis. Specifically, I question the Judge's reliance on generalities rather than the "particular facts" surrounding the violation. Ultimately, however, I find sufficient evidence to support the Judge's decision under the traditional S&S test and therefore concur with the majority in affirming the S&S designation.

The Judge found that the smoke caused by the violation was reasonably likely to result in three types of injury: smoke and toxic fume inhalation, burns, and falls due to impaired visibility. 46 FMSHRC at 1069. The problem is that in reaching this conclusion, he repeatedly rejected Yates' mine-specific arguments in favor of broad precedents and truisms.

Regarding smoke inhalation, Yates argued that smoke would not have accumulated in the building because it would have been directed straight up through a shaker screen and into the sky. In rejecting this argument, the Judge cited caselaw for the proposition that normal mining conditions "could include different ventilation patterns" causing smoke to drift in the building, without reference to any actual ventilation patterns in the washer building. *Id.* The Judge also cited Commission precedent that smoke inhalation is a "common sense conclusion" in the event of a fire. *Id.*, *citing Am. Coal Co.*, 39 FMSHRC 8, 18 (Jan. 2017). However, that case involved an underground mine, which implies a more enclosed space than the surface building at issue.

Nevertheless, the majority notes testimony that one miner had to leave the building because "the smoke was too bad" (slip op. at 6, *citing* Tr. 69), which provides at least some support for the Judge's finding of accumulated smoke. And if miners *were* reasonably likely to be exposed to smoke inhalation, the record supports the Judge's finding that the resulting injury would be reasonably serious. The Judge noted testimony from both the MSHA Inspector and a safety specialist that smoke from burning rubber is toxic and can cause lung damage. 46 FMSHRC at 1070, *citing* Tr. 61, 110-12.

As for the burn risk, Yates argued that the elbow of the pipe where the fire occurred was barricaded and therefore inaccessible. The Judge countered that smoke would rise from the elbow and pose a burn hazard to miners at the top of the drainage pipe. The Judge relied solely on "common knowledge that smoke rises," with no evidentiary support for the proposition that the smoke would *still be hot enough to cause burns* after traveling the 10 feet from the elbow to the mouth of the pipe. 46 FMSHRC at 1069. However, in finding that the resulting burns would be serious, the Judge did note testimony from the safety specialist that the smoke was black, and "the blacker the smoke, the hotter the fire." *Id.* at 1070, *citing* Tr. 110-12.

The Judge's decision *does* present circumstance-specific evidence in support of a fall hazard. He credited the inspector's testimony that the fire produced "thick, heavy, black smoke" that would impair miners' visibility and cause them to stumble into the open grating on the third floor, resulting in strains or broken bones. *Id.*, *citing* Tr. 44-45, 62. As the majority notes, a Judge's credibility determinations are entitled to great weight and may not be overturned lightly. *Farmer v. Island Creek Coal Co*., 14 FMSHRC 1537, 1541 (Sept. 1992).

Much of the Judge's rationale in finding the violation S&S is divorced from the "particular facts surrounding that violation," contrary to the requirements of the Commission's traditional S&S test. *Mathies*, 6 FMSHRC at 3. However, the Judge did credit testimony from the inspector and the safety specialist that the fire produced thick, heavy, black smoke (sufficient to make at least one miner flee the building), of a type that causes lung damage, and which would have impaired miner visibility, in turn causing miners to stumble in the open grating on the third floor.[13]

In light of the weight given to a Judge's credibility determinations, I would affirm the Judge's S&S determination under the Commission's traditional and comprehensive *Mathies/Peabody* framework.

For the reasons above, I concur in affirming the fact of the violation and the S&S designation for Citation No. 9633680.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

[13] All of these potential sources of injury (smoke and toxic fume inhalation, burn risk and fall risk), which are key considerations in determining whether a violation is significant and substantial, would apparently not be reached under the *Consol* test.

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May 20, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. GMS MINE REPAIR & MAINTENANCE, INC.	Docket No. VA 2023-0021

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

DECISION

BY: Jordan and Baker, Commissioners

This proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act" or "Act"), addresses legal issues of safeguard enforceability and issue preclusion. GMS Mine Repair & Maintenance, Inc. ("GMS") is an independent contractor providing services at Buchanan Mine #1. An inspector with the Department of Labor's Mine Safety and Health Administration ("MSHA") cited GMS for failing to comply with a safeguard notice previously issued to the mine's production-operator.[1] The safeguard requires that rail mounted vehicle operators adhere to block light signals controlling traffic in the underground mine.

GMS concedes that it violated the requirements of the safeguard; a GMS miner traveled the track after encountering a red stop light, resulting in a head-on collision and serious injuries to multiple miners. However, GMS argues that it cannot be held liable because it was not specifically issued the safeguard by the Secretary. It argues that 30 C.F.R. § 75.1403-1(b) requires the Secretary of Labor to provide operators with written notice of a safeguard prior to enforcement, and although GMS meets the definition of an operator it received no such written notice.[2] GMS also asserts that the Secretary is precluded from relitigating this issue because a

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[1] Safeguards are effectively mine-specific mandatory standards directed at reducing transportation hazards in underground coal mines. *See* 30 U.S.C. § 874(b); *Wolf Run Mining Co.*, 659 F.3d 1197, 1201-02 (D.C. Cir. 2011), *aff'g* 32 FMSHRC 1228 (Oct. 2010). An MSHA Inspector may issue a written safeguard notice advising an operator of conduct that is prohibited or required and may thereafter issue a citation for the operator's alleged failure to comply. 30 C.F.R. § 75.1403-1(b). Here, the safeguard was issued to the mine's former production-operator, Consolidation Coal Company. Jt. Stips. 10, 11. When the relevant citation was issued to GMS, the mine was owned and operated by Buchanan Minerals, LLC. Jt. Stip. 1.

[2] Initially, GMS also claimed the safeguard did not fix a time for compliance as required by 30 C.F.R. § 75.1403-1(b). It has since withdrawn that argument. PDR at 8; Reply at 13 n.4.

different Administrative Law Judge previously issued a decision finding a different safeguard unenforceable against GMS in the absence of written notice from the Secretary.

In the current proceeding, the Administrative Law Judge concluded that the prior Judge's decision was not a final judgment of the Commission and had no preclusive effect. 46 FMSHRC 824, 830 (Sept. 2024) (ALJ). She then interpreted section 75.1403-1(b) to require written notice to "mine operators." She found the safeguard had been issued to the mine's owner-operator, and GMS had constructive notice of the safeguard's requirements. Accordingly, she determined that the safeguard was enforceable against GMS and affirmed the citation. *Id.* at 833. GMS appeals and asks the Commission to vacate the citation.

The Commission conducts *de novo* review of legal issues arising from a decision on summary judgment. *E.g.*, *West Alabama Sand & Gravel, Inc.*, 37 FMSHRC 1884, 1887 (Sept. 2015). For the reasons below, we conclude that the Judge's nonbinding decision in the prior proceeding does not have preclusive effect here. We also hold that a valid safeguard issued in writing to any operator at a mine may subsequently be enforced against other operators at that mine (including independent contractors). If written notice was provided to an operator at the mine consistent with 30 C.F.R. § 75.1403-1(b), and another operator at the mine has constructive notice of the safeguard, *separate* written notice by the Secretary is not required for the safeguard to be enforceable against that second operator.

Here, the relevant safeguard was properly issued to the mine's former production-operator, and GMS had constructive knowledge of the safeguard's requirements. Accordingly, we affirm the Judge's finding that the safeguard was enforceable against GMS.

We will address the topic of issue preclusion as a threshold determination first. Then, we will discuss the enforceability of this safeguard against this operator based upon the safeguard standard and the particular facts present here.

I.

Issue Preclusion

The doctrine of issue preclusion, also called collateral estoppel, prevents a party from relitigating an issue that has been actually and necessarily decided in a prior case involving the same parties. *E.g., Montana v. United States*, 440 U.S. 147, 153 (1979); *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). Final administrative adjudications that meet these requirements may have preclusive effect. *E.g.*, *B&B Hardware*, 575 U.S. 148. However, issue preclusion is ultimately an equitable doctrine. *E.g.*, *PenneCom B.V. v. Merrill Lynch & Co., Inc*., 372 F.3d 488 (2d Cir. 2004). Certain conditions may render preclusion inappropriate even if the baseline requirements are met. For example, a decision should not be granted preclusive effect if doing so would be contrary to Congressional intent or the public good, or if the common issue is a pure question of law. *E.g.*, *Astoria Federal Savings and Loan Assoc. v. Solimino*, 501 U.S. 104, 107 (1991); *Env't Def. v. U.S. E.P.A.*, 369 F.3d 193, 203 (2d Cir. 2004); *United States v. Moser*, 266 U.S. 236, 242 (1924). For the reasons below, we find that even if the baseline requirements have been met, preclusion is inappropriate in this instance.

A. Factual and Procedural Background

As detailed further below, GMS was cited for violating a safeguard which required compliance with the mine's underground traffic control system. GMS was not separately issued written notice of the safeguard by the Secretary, although the safeguard's requirements were included in training materials provided to GMS by the production-operator. GMS concedes that it violated the safeguard; the issue is whether the safeguard can be enforced against GMS.

In 2018, a citation was issued to GMS for failing to comply with a different safeguard at a different mine. That safeguard was issued to Consol Energy, the mine's owner-operator, and requires workers to be in a safe position when using cables to move equipment. GMS never received written notice of the safeguard from the Secretary, although Consol provided GMS with a summary of the mine's safeguards.

GMS contested the citation, and a Commission Judge vacated the citation on three grounds: the safeguard was not enforceable against GMS because section 75.1403-1(b) provides that only those operators who have been advised of the safeguard in writing by the Secretary may be cited; the safeguard was facially invalid because it did not specify the hazard and remedy or fix a time for compliance; and the safeguard did not apply to the factual circumstances described in the citation. *GMS Mine Repair & Maintenance, Inc.*, 42 FMSHRC 135, 137-40 (facts), 140-45 (analysis) (Feb. 2020) (ALJ). The Judge's decision was not appealed.

In the current proceeding, GMS argued below that the issue of whether a safeguard may be enforced against GMS in the absence of written notice from the Secretary had already been addressed and resolved in the prior matter, therefore the parties are precluded from relitigating the issue. The Judge rejected GMS's argument. She determined that the prior judgment was neither final nor necessary, because Judges' decisions are nonbinding and the case was decided on multiple grounds. 46 FMSHRC at 830. Accordingly, she went on to address whether the safeguard was enforceable against GMS and ultimately affirmed the citation.

On appeal of the collateral estoppel issue, GMS contends that a judgment need not be precedential to be final, and that most courts have given preclusive effect to alternate holdings. The Secretary asserts that Commission Judges' nonbinding decisions cannot have preclusive effect and further argues that public policy precludes estoppel in this case.

B. Disposition

The issue currently before us was actually decided in a prior decision involving the same parties. 42 FMSHRC at 140-42 (holding that a safeguard issued to an owner-operator could not be enforced against GMS in the absence of written notice from the Secretary). Although the earlier decision was decided on multiple grounds, courts generally consider "necessary" any finding that was independently sufficient to support the judgment. *E.g.*, *Intell. Ventures I LLC v. Cap. One Fin. Corp.*, 937 F.3d 1359, 1375-76 (Fed. Cir. 2019). The Judge's decision had also attained finality, as it was not appealed to the Commission. *See Hitchens v. Cnty. of Montgomery*, 98 Fed. App. 106, 112 (3d Cir. 2004).

However, that does not end our analysis. We find it inappropriate to grant preclusive effect to the prior Judge's decision. Congress did not intend for nonbinding Judges' decisions to have preclusive effect on the Commission. Furthermore, the issue in common is a pure question of law, and preventing the parties from re-litigating in this instance would be contrary to the public good.

First, the principles of preclusion generally apply to final administrative adjudications "*except* 'when a statutory purpose to the contrary is evident.'" *Astoria*, 501 U.S. at 107 (emphasis added) (citation omitted); *also Duvall v. Atty Gen. of U.S.*, 436 F.3d 382, 387 (3d Cir. 2006) (noting that preclusion should not "frustrate congressional intent"). The Mine Act envisions the appellate level as the body tasked with formulating precedent. *See* 30 U.S.C. § 823(d)(1) (Judges' decisions become final if not taken up for review); 30 U.S.C. § 823(d)(2)(B) (cases may be taken up for review "upon the ground that the decision may be contrary to law or Commission policy, or that a novel question of policy has been presented"). Congress clearly did not intend for the Commission to be bound by the decision of an Administrative Law Judge.

Consistent with this intent, Commission Procedural Rule 69(d) states that a Judge's decision "is not a precedent binding upon the Commission." 29 C.F.R. § 2700.69(d). Addressing comments on this rule prior to final publication, the Commission explicitly stated that a "judge's decision not reviewed by the Commission does not have such preclusive effect" because the Commission "is not bound by the unreviewed decisions of its judges." Procedural Rules, 58 Fed. Reg. 12158-02, 12163 (Mar. 3, 1993) (discussing Rule 72, incorporated as Rule 69(d) at 71 Fed. Reg. 44190 (Aug. 4, 2006)). Here, GMS seeks to grant preclusive effect to a Judge's decision that was not appealed to the Commission. Furthermore, as discussed below, the common issue here is one of legal interpretation. Granting preclusive effect to the earlier decision would effectively make a Judge's legal analysis binding on the Commission, contrary to Congressional intent.

We clarify that *Commission* decisions may have preclusive effect. *See, e.g.*, *BethEnergy Mines, Inc.*, 14 FMSHRC 17, 26 (Jan. 1992). We only find it inappropriate to grant preclusive effect to decisions by an *Administrative Law Judge*. Additionally, we reject the Judge's determination that the prior decision was "not a valid and final judgment." 46 FMSHRC at 830. A judgment by an Administrative Law Judge that is not taken up for review becomes a "final decision of the Commission." 30 U.S.C. § 823(d)(1). Preclusion is inappropriate here because the earlier decision was *nonbinding on the Commission*, not because it is nonfinal. *Cf. Hitchens*, 98 Fed. App. at 112.

Second, preclusion is inappropriate here because the common issue between the two proceedings is a pure question of law. The Supreme Court has recognized that preclusion does "not apply to unmixed questions of law." *Moser*, 266 U.S. at 242. Here, the cases do share a basic framework: GMS was cited for failing to comply with a safeguard issued to the owner-operator of the mine where it was providing services and did not directly receive written notice from the Secretary. However, the two cases involve different safeguards issued at different mines. More significantly, no knowledge of the specific facts of the case(s) is required to resolve the determinative question: does section 75.1403-1(b) entitle contractors to written notice of a safeguard prior to the issuance of a citation? The only issue shared by the two proceedings is a legal question of regulatory interpretation. Significantly, this case was decided by the ALJ on cross-motions for summary judgment, indicating that the parties were aware that this concerned a purely legal issue. *See KenAmerican Resources, Inc.*, 38 FMSHRC 1943, 1946 (Aug. 2016) ("the party moving for summary judgment bears the initial burden of showing that there are no genuine disputes as to material fact."). As a result, preclusion is not appropriate.

This exception for unmixed questions of law is particularly relevant given the unusual characteristics of the regulated community. As the Supreme Court explained, a party should not be prevented from challenging a previously enunciated rule of law simply because the parties are the same. *Moser*, 266 U.S. at 242; *Montana*, 440 U.S. at 162. As the Secretary noted at oral argument, the community regulated by the Mine Act is relatively small. The same parties routinely come before the Commission, and it is not unusual for the same parties to litigate the same legal issue more than once, under different facts arising at different mines. Oral Arg. Tr. 49. Indeed, this is what occurred here. If the Commission were to grant a decision preclusive effect over future proceedings involving different mines and different safeguards, simply because they involved the same question of regulatory interpretation, it "would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue." *Env't Def.*, 369 F.3d at 203 (citing *United States v. Mendoza*, 464 U.S. 154, 160 (1984)).

Finally, granting preclusive effect to the prior decision would be contrary to a Congressionally intended public good. As noted above, issue preclusion is not appropriate where it would be contrary to Congressional intent. *Duvall*, 436 F.3d at 391. It is also inappropriate where it would be contrary to the public good. *E.g.*, *Tipler,* 443 F.2d at 128; *Env't Def.*, 369 F.3d at 203; *also* The Restatement (Second) of Judgments § 28(5)(a). Logically, issue preclusion is doubly inappropriate where it implicates both these factors. *See Fayette Elec. Co-Op.*, 316 NLRB 1118, 1119-20 (1995) (finding a "compelling need to permit re-litigation" where the prior finding could deter protected activity contrary to the statute's purpose and the public interest).

Here, preclusion would be contrary to the safety-promoting purposes of the Mine Act. *See* 30 U.S.C. § 801(g) (The purpose of the Act is to protect the health and safety of miners); *e.g.*, *Nally & Hamilton*, 38 FMSHRC 1644, 1651 (July 2016). Allowing the prior decision to function as a contractor-specific precedent increases the danger to miners in locations where GMS provides services. As the Judge noted, production operators are in the best position to know the composition of their workforce. 46 FMSHRC at 833. The Secretary only learns that a contractor has begun providing services at a mine through reports or inspections. Sec'y Br. at 11. If GMS cannot be cited for violating an existing safeguard until it receives written notice from the Secretary, there will necessarily be a period of time—after GMS enters a service contract but before the Secretary learns the contractor is onsite and provides notice—when GMS has no legal obligation to comply with the safeguard, and miners are not protected from the hazard.

Additionally, if GMS cannot be cited unless it receives written notice from the Secretary, GMS may have reduced incentive to comply with known safeguards for which it lacks formal notice. *E.g.*, *Elmer W. Davis*, 2024 WL 4713188 (OSHRC ALJ Sept. 30, 2024) (granting preclusive effect would "offend public policy" by reducing an employer's incentive to maintain a safety program). Preventing re-litigation of this issue endangers miners, contrary to the safety-promoting purpose of the Mine Act. Granting preclusive effect to the prior decision is contrary to a Congressionally mandated public good and therefore inappropriate.

In sum, the parties are not precluded from relitigating the issue of safeguard enforceability arising in this proceeding. Accordingly, the issue is addressed below.

II.

Enforceability of the Safeguard

Our conclusion that the legal issue before us is not precluded from our review does not end our analysis. We must still determine whether this safeguard is enforceable against GMS in the absence of actual written notice by the Secretary to GMS. For the reasons set forth below, we find in the affirmative.

Congress has authorized the Secretary to provide safeguards to minimize the hazards associated with the transportation of men and materials in underground coal mines. 30 U.S.C. § 874(b). The Secretary's regulatory provisions implementing this authority set out the criteria by which she may require safeguards "on a mine-by-mine basis." 30 C.F.R. § 75.1403-1(a). Procedurally, an authorized representative of the Secretary must "in writing advise the operator of a specific safeguard which is required . . . [and] fix a time in which the operator shall provide and thereafter maintain such safeguard." 30 C.F.R. § 75.1403-1(b). If the condition prompting the safeguard is not fixed and maintained thereafter, the operator shall be issued a citation. *Id.* Effectively, therefore, safeguards are mine-specific mandatory standards. *Wolf Run Mining Co.*, 659 F.3d 1197, 1201-02 (D.C. Cir. 2011), *aff'g* 32 FMSHRC 1228 (Oct. 2010).

GMS asserts that independent contractors providing services at a mine fall within the Mine Act's general definition of an "operator" (30 U.S.C. § 802(d)) and therefore, consistent with the text of section 75.1403-1(b), the Secretary must advise a contractor of a safeguard in writing prior to enforcement. GMS Br. at 7. Conversely, the Secretary asserts that safeguards are mine-specific rather than operator-specific and suggests that once a valid safeguard notice has been issued to any on-site operator, it becomes effective and enforceable for all on-site operators. Sec'y Br. at 7; Oral Arg. Tr. 31-32, 35. The Judge concluded that it is sufficient for the Secretary to provide written notice to the "mine operator." 46 FMSHRC at 833.

The legal question before us, then, is one of regulatory interpretation: does the requirement that the Secretary "in writing advise the operator" prior to enforcement require her to provide written notice to each and every on-site operator, to any on-site operator, or to the mine's production-operator? In practical and specific terms, the question before us is whether an independent contractor providing services at a mine may violate with impunity an otherwise valid safeguard that was issued to the mine's production-operator, simply because the Secretary did not separately provide that contractor with written notice of the safeguard. For the reasons below, we find that it may not.

A. Factual and Procedural Background

This matter was decided below on cross-motions for summary decision.[3] Accordingly, the material facts are uncontested. Buchanan Mine #1 is an underground coal mine with a rail haulage system. Traffic is controlled by "block lights"—red and green lights that indicate right of way and coordinate track usage to prevent collisions. 46 FMSHRC at 825-26; Jt. Ex. 3.

On February 5, 2013, in response to a vehicle collision, MSHA issued Safeguard No. 8202805 requiring "all rail mounted equipment at this mine site to follow the block light system" and "plac[ing] the operator on notice that failure to follow the block light system will result in more stringent enforcement." The safeguard notice was issued to Consolidation Coal Company, the mine's production-operator at the time. Jt. Stips. 10-12; Jt. Ex. 3.

Buchanan Minerals, LLC ("Buchanan") subsequently became the production-operator at the mine and entered into a labor services agreement with GMS. As an independent contractor performing services at the mine, GMS is an "operator" as defined in section 3(d) of the Mine Act. Under the terms of the labor service agreement, GMS is required to adhere to mandatory safety standards and provide training to GMS personnel working at the mine. The training GMS provided to its employees (based on materials provided by Buchanan) included block light system training but did not specifically mention safeguards. Jt. Stips. 1, 3-4, 13-16.

In August 2022, two personnel carriers at the mine collided when a GMS employee improperly changed a block light from red to green (indicating that the trackway was clear when it was not). An MSHA inspector subsequently issued Citation No. 8312039 to GMS alleging a failure to comply with Safeguard No. 8202805. The citation was evaluated as significant and substantial and the result of moderate negligence. Jt. Stips. 8, 17-22; Jt. Ex. 1.

GMS concedes that, if Safeguard No. 8202805 is valid and enforceable against GMS, a violation occurred. Jt. Stip. 23. The parties also stipulate that prior to the issuance of Citation No. 8312039, no authorized representative of the Secretary had provided GMS with written, electronic or verbal notice of Safeguard No. 8202805. Jt. Stip. 24.

The parties filed cross-motions for summary decision. In relevant part, GMS asserted that the safeguard is not enforceable against GMS pursuant to the plain text of section 75.1403-1(b), which requires written notice to operators. The Secretary countered that safeguards are mine-specific mandatory standards that must be uniformly enforced against all operators at the mine, including contractors.

The Judge denied GMS's motion and granted the Secretary's motion. In relevant part, she explained that production-operators have both the autonomy to control operations and the responsibility of ensuring compliance, and are therefore in the best position to know the composition of their workforce and ensure that contractors are adequately informed. She

[3] The parties filed two rounds of motions. The initial motions were denied due to an insufficient factual record. The parties filed updated stipulations on February 23, 2024, and then filed renewed motions. In this decision, "Jt. Stip." refers to the updated Joint Stipulations.

concluded that the "only reasonable reading" of section 75.1403-1(b) is that MSHA must advise the *mine* operator in writing. She also determined that GMS had constructive notice of the safeguard, because Buchanan had properly ensured that contract employees were adequately trained on the safeguard's requirements. 46 FMSHRC at 833. In light of these findings and the parties' stipulations, the Judge affirmed Citation No. 8312039 as issued.

B. Disposition

For the reasons below, we agree with the Secretary's interpretation. The structure and purpose of section 75.1403-1(b) plainly demonstrate an intent that safeguards be enforceable against all operators at a mine once properly issued in writing to any operator at that mine. Accordingly, an otherwise valid safeguard issued to a mine's production-operator may later be enforced against another operator at the mine (including an independent contractor), even if that other operator did not directly receive written notice of the safeguard from the Secretary, so long as the operator had sufficient constructive notice of the safeguard's requirements to satisfy due process. Here, the safeguard was validly issued to the mine's production-operator and GMS received constructive notice, so the safeguard is enforceable against GMS.

In finding the "right answer" to questions of regulatory interpretation, courts must carefully consider the regulation's structure and purpose.[4] *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019); *also, e.g.*, *Rock of Ages Corp. v. Sec'y of Labor*, 170 F.3d 148, 155 (2d Cir. 1999) (regulations should be read as a whole and interpreted consistently with their protective purpose). The Secretary is statutorily authorized to provide safeguards to minimize hazards associated with the transportation of men and materials. 30 U.S.C. § 874(b). The regulation implementing this authority permits the Secretary to issue safeguards on a "mine-by-mine basis," via written notice to the operator, and to thereafter issue citations for failure to comply. 30 C.F.R. §§ 75.1403-1(a), (b). In other words, the structure and purpose of the safeguard provision is to allow the Secretary to promulgate mine-specific mandatory standards to minimize transportation hazards. *E.g.*, *Wolf Run*, 659 F.3d at 1201-02.

In turn, the Mine Act declares that operators are primarily responsible for ensuring miner safety and requires "each operator"—defined to include independent contractors—to comply with mandatory standards promulgated by the Secretary. 30 U.S.C. §§ 801(a), (e), (g); 802(d). In simple terms: each operator must ensure miner safety and comply with mandatory standards, independent contractors are operators, and safeguards are mandatory standards. Accordingly,

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[4] Under *Kisor v. Wilkie*, questions of deference only arise if the relevant regulation is genuinely ambiguous *even after* considering its text, structure, history and purpose. 588 U.S. 558, 573, 575 (2019). While the Supreme Court recently addressed the framework for statutory interpretation in *Loper Bright Ent. v. Raimondo*, 603 U.S. 369 (2024), *Kisor* remains good law with respect to regulatory interpretation. *E.g.*, *U.S. v. Prather*, 138 F.4th 963, 975 (6th Cir. 2025). Here, we find section 75.1403-1(b) unambiguous in light of its structure and purpose. By the same token, however, the Secretary's interpretation is consistent with the regulation's structure and purpose. Accordingly, we would find the Secretary's interpretation reasonable if the regulation were ambiguous, and we would also find it to be the "best" reading consistent the framework laid out in *Loper Bright*, 603 U.S. at 373-74.

independent contractors must ensure miner safety and comply with any safeguards in effect at the mine where they are providing services. Like any other mandatory standard, a safeguard must be enforceable against *each* operator at the mine where it is in effect.[5]

Interpreting section 75.1403-1(b) to require separate written notice to each onsite contractor prior to enforcement would allow contractors to violate mandatory standards that already exist at a mine, without consequence, simply because they had not received written notice from the Secretary. This puts miners at risk of injury or death, as indeed occurred here. Conversely, interpreting section 75.1403-1(b) to require an initial written notice to an on-site operator (at which point the safeguard goes into effect as a mine-specific mandatory standard enforceable against any other operators working at the mine) is consistent with both the basic rule that all operators must comply with mandatory standards in effect at a mine, and the broader safety-promoting principles of the Mine Act. *See Rock of Ages*, 170 F.3d at 155 (choosing the regulatory interpretation that would encourage greater vigilance where a contrary ruling would endanger miners).

The safety concerns raised by GMS' interpretation could be resolved if every on-site contractor were to receive direct written notice of every relevant safeguard *prior* to beginning work. However, we agree that requiring the Secretary to timely reissue every safeguard to every contractor would be "impossible" (Sec'y Br. at 11) or at least "highly impractical" (46 FMSHRC at 833). As noted previously, MSHA only learns that a contractor has begun providing services at a mine when it receives a report or conducts an inspection. 46 FMSHRC at 832; Sec'y Br. at 11. There is no legal requirement that an operator inform MSHA that it has hired new contractors. This raises timeliness concerns. A contractor could be onsite for weeks, or even complete a project, before MSHA learns of its presence and reissues the relevant safeguards. The Secretary testified that, given the "significant" numbers of both safeguards and contractors in underground coal mines, implementing a system to collect the required information in a sufficiently timely fashion to ensure miner safety would be a "substantial burden." Oral Arg. Tr. 43-44. We further note that placing the practical burden of ensuring contractor compliance on MSHA rather than the production-operator is contrary to Congress' explicit intent. 30 U.S.C. § 801(e).

Of course, courts must also carefully consider the plain text of the relevant provision. *Kisor*, 588 U.S. at 575. However, we reject GMS' assertion that the plain language of section 75.1403-1(b) requires separate written notice to *every* operator.[6] First, that is arguably not a "plain text" argument. The relevant provision requires written notice to "the" operator, not

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[5] Of course, a safeguard must still be valid—i.e., it must be issued in writing, fix a time for compliance, and identify the hazard and remedy with specificity—to be enforceable. *See* 30 C.F.R. § 75.1403-1(b); *e.g.*, *Am. Coal Co.*, 34 FMSHRC 1963, 1967 (Aug. 2012).

[6] GMS is correct, however, that the Mine Act defines "operator" to include independent contractors working on site at a mine. 30 U.S.C. § 802(d). The Judge's interpretation of the regulatory provision, in which the "operator" is limited to the "mine operator" (46 FMSHRC at 832-33), is inconsistent with the Mine Act. The initial written notice rendering a safeguard effective at a mine may be issued to any on-site operator.

"each" or "every" operator. 30 C.F.R. 75.1403-1(b). Whether the provision is read as GMS' "every operator" or the Secretary's "any operator," some degree of interpretation is required. Accordingly, the provision should be interpreted consistent with its structure and intent. *Kisor*, 558 U.S. at 575.

Second, even apparently clear language should not be enforced as written if the resulting meaning would be contrary to the regulator's intent or would lead to absurd results. *E.g.*, *United States v. Ryan,* 284 U.S. 167, 175 (1931)*; Dyer v. United States*, 832 F.2d 1062, 1066 (9th Cir. 1987); *Wolf Run*, 32 FMSHRC at 1678-79. Even if the text of the provision supported GMS' interpretation on its face, for the reasons outlined above, we find that requiring the Secretary to provide separate written notice of every safeguard to every independent contractor working at every mine cannot comport with the intent of the safeguard provisions or the safety-promoting purposes of the Act. *See Central Sand & Gravel Co.*, 23 FMSHRC 250, 254 (Mar. 2001) (rejecting as absurd an interpretation that would "negate much of [the standard's] protective intent").

Safeguards are mine-specific mandatory standards enforceable against all operators at the mine where the standard is in effect. The only interpretation of the notice requirement in section 75.1403-1(b) that comports with this purpose, as well as with the broader safety-promoting purposes of the Act, is to require the Secretary to in writing advise *an* on-site operator of the safeguard. Once an otherwise valid safeguard has been issued to an operator at the mine, it is in effect at the mine and may be enforced against all on-site operators, including independent contractors providing services at the mine. Any other reading would endanger miners and lead to absurd results.

As a final matter, we have long recognized that operators are entitled to due process in the safeguard context. Like any other mandatory standard, a safeguard may not be enforced against a party that lacks fair notice of the safeguard's requirements. *E.g.*, *Am. Coal Co*., 34 FMSHRC 1963, 1967 (Aug. 2012); *Southern Ohio Coal Co.*, 7 FMSHRC 509, 512 (Apr. 1985) ("*SOCCO*"); *also, e.g.*, *Mainline Rock and Ballast, Inc. v. Sec'y of Labor*, 693 F.3d 1181, 1187 (10th Cir. 2012); *Ideal Cement Co.*, 12 FMSHRC 2409, 2416 (Nov. 1990).

However, we emphasize that due process turns on the objective comprehensibility of the standard's *requirements*, i.e., whether a reasonably prudent operator would understand what conduct is prohibited or required by the standard. *E.g.*, *Ideal Cement*, 12 FMSHRC at 2416; *SOCCO*, 7 FMSHRC at 512 (holding that safeguards must identify the relevant hazard and remedy with specificity). It does not turn on the *method* of notification, for example, whether a specific operator was notified in writing by the Secretary.[7] If an operator understands or should

[7] GMS suggests that Congress included the written notice requirement in section 75.1403-1(b) to ensure due process, as a counterbalance to the Secretary's unusual authority to issue mine-specific mandatory standards without notice-and-comment rulemaking. However, the Commission has already weighed the Secretary's broad grant of authority against operators' right to fair notice. We concluded that the proper counterbalance is to ensure that safeguards are narrowly tailored and identify the relevant hazard with specificity. *E.g.*, *SOCCO*, 7 FMSHRC at 512; *Am. Coal Co*., 34 FMSHRC at 1967.

understand what conduct is prohibited or required by a standard, due process has been met. Fair notice may be achieved through constructive notice of a safeguard's requirements. Further, it is significant in this case that GMS received actual notice of the contents of the safeguard from mine-specific training materials.

Applying the uncontested facts in this matter to the foregoing analysis, the citation must be affirmed. The parties have stipulated that if Safeguard No. 8202805 is valid and enforceable against GMS, Citation No. 8312039 can be affirmed as written. Jt. Stip. 23. The safeguard is valid, since the safeguard notice was issued in writing to the production-operator of Buchanan Mine #1, identifies the hazard and remedy, and fixed a time for the production-operator to comply. Jt. Stip. 10-11; Jt. Ex. 3. The safeguard is enforceable against GMS, since GMS was an independent contractor performing services at Buchanan Mine #1 and therefore an "operator" subject to any mandatory standards in effect at the mine when the citation was issued. Jt. Stips. 3, 13, 18-20. Finally, GMS had constructive notice of the safeguard, because Buchanan provided GMS with training materials that included the practice covered by the safeguard. Jt. Stips 15-16; 46 FMSHRC at 833.

III.

Conclusion

For the reasons above, we find that the prior Judge's nonbinding decision in *GMS Mine Repair & Maintenance, Inc.*, 42 FMSHRC 135 (Feb. 2020) (ALJ), does not have preclusive effect on the proceeding before us. We further hold that the Secretary was not required under section 75.1403-1(b) to provide separate written notice to GMS prior to enforcement, as the safeguard was properly issued in writing to the mine's prior production operator and GMS had constructive notice of the safeguard's requirements. Accordingly, Safeguard No. 8202805 is enforceable against GMS, and Citation No. 8312039 is affirmed as written.

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

Chair Rajkovich, concurring:

I write separately solely with respect to the majority's holding in Section I.B that Judges' decisions cannot have preclusive effect. I otherwise fully concur with the majority.

The fundamental precept of issue preclusion is that "once an issue is actually and necessarily decided by a court of competent jurisdiction, that determination is conclusive" in any subsequent suits involving the same parties. *Montana v. U.S.*, 440 U.S. 147, 153 (1979) (quotation omitted). Preclusion "fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.* at 154. Once a final decision has been rendered on an issue, the parties should be able to trust that, *for those parties*, that issue is conclusively decided.

While Judges' decisions do not have precedential effect, as GMS notes, *precedent* and *preclusion* are "conceptually distinct." GMS Reply Br. at 2. A precedential judgment establishes a legal principle applicable to all future cases, while a preclusive judgment conclusively answers a specific question for specific parties. Multiple courts and agencies have found it appropriate to grant preclusive effect to nonprecedential decisions. *See, e.g.*, *Pena v. Meissner*, 232 F.3d 896, n.1 (9th Cir. 2000) (citing CTA9 Rule 36-3); *Van Houten v. Sansone*, 152 Fed. Appx. 742, n.* (10th Cir. 2005) (citing 10th Cir. R. 36.3); *Hitchens v. Cnty. of Montgomery*, 98 Fed. App. 106, 112 (3d Cir. 2004); *The Permanente Med. Grp., Inc. & Nat'l Union of Healthcare Workers*, 372 NLRB No. 51 (Feb. 9, 2023).

Granting preclusive effect to a Judge's decision would not force the Commission to broadly adopt that Judge's holding as law, it would simply allow the prior decision to stand *as to those parties*, thus ensuring judicial consistency. Conversely, denying preclusive effect to Judges' decisions could lead to an unworkable degree of inconsistency. Notably, Judges' decisions are nonbinding on *other Judges* as well as on the Commission. If nonbinding decisions cannot have preclusive effect, then a party could "shop" the same question to multiple Judges, potentially resulting in two conclusive but contrary findings for the same parties on the same issue. While decisions by Commission Judges are *nonbinding*, they are unquestionably *final* unless appealed to the Commission. 30 C.F.R. § 823(d)(1).

I would find that a Judge's decision that actually and necessarily decides an issue between two parties *may* have preclusive effect, subject to any of the usual exclusions or exceptions. As explained by the majority (slip op. at 4-5), some exclusions do apply here, therefore I concur with the majority in finding that the prior Judge's decision does not have preclusive effect *in this instance*. I also fully concur with the majority's analysis in Section II.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

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COMMISSION ORDERS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 1, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. SHORT MOUNTAIN SILICA	Docket No. SE 2025-0161 A.C. No. 40-02964-620004

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

ORDER

BY: Rajkovich, Chair; Jordan and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act"). On August 13, 2025, the Commission received from Short Mountain Silica ("Short Mountain"), a pro se operator, a motion seeking to reopen a penalty assessment, which became 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 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 to Short Mountain on May 12, 2025, and became a final order of the Commission on June 11, 2025. On June 13, 2025, Short Mountain attempted to request a hearing to contest two citations listed on the proposed assessment. MSHA's Office of Assessments informed Short Mountain that the case was not timely contested. On July 28, 2025, MSHA sent Short Mountain a delinquency notice.

Short Mountain states that it inadvertently contested the citations late due to changes in the management structure at the mine. It requests that the final order be reopened with respect to Citation Nos. 7558659 and 7558660. The Secretary does not oppose the motion. She notes that Short Mountain's attempt at contesting the citations was only two days late and, that once the operator received the delinquency notice, it filed its motion to reopen approximately 16 days later. The Secretary states that Short Mountain has a good history of timely paying or contesting penalties in the past.

In considering whether an operator has unreasonably delayed in filing a motion to reopen, we find relevant the amount of time that has passed between an operator's receipt of a delinquency notice and the operator's filing of its motion to reopen. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion). As noted by the Secretary, Short Mountain filed its motion to reopen approximately two weeks after receiving the delinquency notice. Moreover, the operator was only two days late in attempting to file its contest of proposed penalties. *See, e.g., Heidelberg Materials US Cement LLC*, 45 FMSHRC 1004, 1005 (Dec. 2023) (quick action after recognizing an error militates in favor of reopening).

There is no indication of bad faith on the operator's part, and the Secretary does not oppose reopening or dispute the facts asserted in the operator's motion. Upon consideration of the filings, including the Secretary's non-opposition, we find that Short Mountain acted in good faith and that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of inadvertence, mistake, and excusable neglect. *See Victory Rock Texas, LLC*, 42 FMSHRC 785, 786 (Oct. 2020) (reopening where pro se operator stated it timely returned its notice of contest but provided no proof of mailing or delivery and the Secretary did not oppose).

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. *See, e.g., DeAtley Crushing Co.*, 46 FMSHRC 632, 633 (Aug. 2024) (finding that good faith and timeliness supported reopening). 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.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

Commissioner Marvit, dissenting:

I write to disagree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. 46 FMSHRC 965, 968 (Dec. 2024) (Marvit, M., dissenting). The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech, Inc.*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975, 977 (Dec. 2024) (Marvit, M., concurring) (citing *Hancock Materials, Inc.*, 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's order became final under the language of section 105(a). The Majority, however, votes to reopen the case. The Mine Act has not granted us authority to reconsider final orders of the Commission as I set out more fully in *Explosive Contractors*. To the contrary, it has limited our authority to do so. Therefore, I respectfully dissent and would deny reopening.

/s/ Moshe Z. Marvit
Moshe Z. Marvit, Commissioner

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May 1, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), v. W.G. YATES AND SONS CONSTRUCTION CO.	Docket No. SE 2025-0167 A.C. No. 08-00798-619185

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

ORDER

BY: Rajkovich, Chair; Jordan and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act"). On August 19, 2025, the Commission received from W.G. Yates and Sons Construction Company ("Yates") 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) 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).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed penalty assessment was delivered to Yates on April 30, 2025, and became a final order of the Commission on May 30, 2025. A delinquency notice was mailed to the operator on July 15, 2025.

Yates requests that the Commission reopen the proposed penalty that became a final order. The operator explains that although it contested Citation No. 9827352, it did not contest the proposed penalty for the citation because it never received the proposed penalty assessment. Yates submitted a declaration by an employee in charge of document control who stated that although he received a delinquency notice regarding the proposed penalty on around July 22, 2025, he never received the proposed penalty assessment. The Secretary opposes the request to reopen.

Yates' assertion that it never received the proposed assessment is not supported by parts of the record. The Secretary provided U.S. Post Office records as an attachment to her opposition, showing that the assessment was delivered to, and signed by, Yates on April 30, 2025.[1] If Yates mistakenly believes that it never received the proposed assessment, this suggests a lack of communication indicating an inadequate or unreliable internal processing system. *Overton Sand & Gravel Co.*, 34 FMSHRC 1053, 1054-55 (May 2012) (denying motion to reopen where the "lack of any procedure for reliable communication between counsel and management represents an inadequate or unreliable internal processing system"); *see also, e.g.*, *Highland*, 31 FMSHRC at 1315 (an operator has not established grounds for reopening where the failure resulted from an inadequate or unreliable internal processing system).

We acknowledge that an operator's timely contest of the underlying citation or order is "a factor" in favor of reopening a final assessment. *Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3346-47 (Nov. 2013). However, all relevant factors must be weighed, and a challenge to

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[1] USPS records indicate that the proposed assessment was signed for by an "H. Holcomb." This is not the individual at Yates in charge of document control nor the operator's safety director. We note that Yates did not file a response to the Secretary's opposition denying that Holcomb was not an authorized agent of the operator. *Cf. Duke Sand & Gravel*, 34 FMSHRC 3035 (Dec. 2012) (reopening when operator explained that the proposed assessment was signed for by an unauthorized former employee).

the underlying citation "does not inevitably excuse the failure to contest the penalty." *Id.* at 3347. In light of the inconsistencies in the record and lack of support for the operator's justification for failing to timely contest the assessment, we find that Yates has not demonstrated good cause.

Accordingly, we deny Yates' motion.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

Commissioner Marvit, concurring:

I write to agree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, 46 FMSHRC 965 (Dec. 2024), I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975 (citing *Hancock Materials, Inc*., 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's order became final under the language of section 105(a). The Majority denies reopening in its opinion because the operator has not alleged good cause or provided a factual accounting for its failure to timely contest the penalties. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority in denying reopening in this matter.

/s/ Moshe Z. Marvit
Moshe Z. Marvit, Commissioner

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May 7, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), v. NALLY & HAMILTON ENTERPRISES, INC.	Docket No. KENT 2026-0007 A.C. No. 15-19931-615751 Docket No. KENT 2026-0011 A.C. No. 15-19931-617725 Docket No. KENT 2026-0008 A.C. No. 15-19931-617722 Docket No. KENT 2026-0010 A.C. No. 15-19931-619943 Docket No. KENT 2026-0009 A.C. No. 18-19931-617727 Docket No. KENT 2026-0003 A.C. No. 15-19931-619945

BEFORE: Rajkovich, Chair; Jordan, and Baker, Commissioners

ORDER

BY: Rajkovich, Chair; Jordan, and Baker, Commissioners

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 18, 2025, the Commission received from Nally and Hamilton Enterprises, Inc. ("Nally") six motions seeking to reopen 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

[1] For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket Nos. KENT 2026-0007, KENT 2026-0011, KENT 2026-0008, KENT 2026-0010, KENT 2026-0009, and KENT 2026-0003, involving similar procedural issues. 29 C.F.R. § 2700.12.

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 assessments were successfully delivered to Nally's address of record. The proposed assessments in KENT 2026-0003 and KENT 2026-0010 were delivered on May 12, 2025 and became final orders of the Commission on June 11, 2025. The proposed assessment in KENT 2026-0007 was delivered on March 10, 2025 and became a final order of the Commission on April 9, 2025. The proposed assessments in KENT 2026-0008, KENT 2026-0009, and KENT 2026-0011 were delivered on April 16, 2025 and became final orders of the Commission on May 16, 2025.

Nally concedes that the proposed assessments were received at the mine and that mine personnel determined that a hearing should be requested to contest the citations and assessments. Nally asserts that the requests to contest were sent to counsel via email but that the requests were "not received and/or initially overlooked." Further, the operator states that it did not know of the failure to timely contest until its counsel performed an audit of the status of the case upon a request from mine management. The Secretary opposes the request to reopen and notes that delinquency notices were mailed to the operator in May and July of 2025.

The Commission has made clear that an operator has not established grounds for reopening where the failure resulted from an inadequate or unreliable internal processing system. *See, e.g.*, *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009). Here, messages to counsel concerning proposed penalties were either overlooked or did not reach their intended recipient for a period of three months. The operator has provided no explanation for the prolonged communications failure. As such, we must conclude that Nally lacked any procedure for reliable communication between management and counsel which represents an inadequate or unreliable internal processing system. *Overton Sand & Gravel Co.*, 34 FMSHRC 1053, 1054-55 (May 2012).

Moreover, the operator has failed to adequately explain why it took so long to file motions to reopen in these matters. Delinquency letters were sent to Nally in May and June of 2025. However, the motions to reopen were not filed until November. In considering whether an operator has unreasonably delayed in filing a motion to reopen, we find relevant the amount of time that has passed between an operator's receipt of a delinquency notice and the operator's filing of its motion to reopen. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC at 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request). Having failed to provide an explanation of why the motion to reopen was not filed within thirty days of receipt of the delinquency notice provides alternative grounds to deny Nally's motions.

Having reviewed Nally's requests and the Secretary's response, we conclude that Nally has failed to establish good cause for reopening the proposed penalty assessments and deny its motion to reopens with prejudice. Accordingly, these cases are dismissed.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

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May 7, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. MITSUBISHI CEMENT CORP.	Docket No. WEST 2025-0190 A.C. No. 04-00157-615894

BEFORE: Rajkovich, Chair; Jordan, and Baker, Commissioners

ORDER

BY: Rajkovich, Chair; Jordan and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On September 25, 2025, the Commission received a motion from Mitsubishi Cement Corporation (“Mitsubishi”) seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it on June 30, 2025.

Previously, Mitsubishi had filed a timely contest of the civil penalty proposed for Citation No. 9890614. The Department of Labor’s Mine Safety and Health Administration (“MSHA”) thereafter served its Petition for Assessment of Penalty on Mitsubishi. The operator did not file an Answer to the Petition with the Commission as required.

On May 28, 2025, the Commission’s Chief Administrative Law Judge issued an Order to Show Cause in response to Mitsubishi’s failure. By its terms, the Order to Show Cause was deemed a Default Order on June 30, 2025, when the Commission did not receive a response.

Mitsubishi states that the Safety Superintendent “recently” accessed MSHA’s Data Retrieval System and discovered that the citation was listed as a final order and delinquent. Mitsubishi requests that the Commission reopen that final order. Mitsubishi submits that it timely filed Answers, but provides no documentation of the filings.

The Secretary opposes the motion to reopen. She argues that the operator’s allegations are not supported by the facts in the record, and that Mitsubishi failed to act swiftly to file the motion. She notes that Mitsubishi’s motion lacks the clarity necessary to discern the precise dates about what Mitsubishi knew and when.

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””); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc*., 17 FMSHRC 1529, 1530 (Sept. 1995).

MSHA records indicate that on March 28, 2025, MSHA served the Petition for Assessment of Penalty on Mitsubishi's Safety Superintendent and Safety Specialist with a reminder that a response must be filed with the Commission within 30 days. Mitsubishi records show that on April 4, 2025, the Safety Superintendent emailed the Secretary's Conference and Litigation Representative with an Answer and a message stating that he would mail a hard copy of the Answer to the Commission. The Commission did not receive an Answer.

The Safety Superintendent also attests in an affidavit that when the Order to Show Cause was brought to his attention, he prepared an Answer on May 31, 2025. The Commission did not receive that Answer either.

In summary, the operator acknowledges receipt of the Petition and the Order to Show Cause. The operator indicates that it properly filed an Answer to each of these issuances. The Commission did not receive an Answer either time. Thus, Mitsubishi's attempts to file an Answer appear to have failed twice.

The Commission has also recognized that expedient action in filing a motion to reopen after missing a deadline demonstrates an operator's good faith effort to comply with the Commission's requirements. *See, e.g., JW Constr. Co.*, 48 FMSHRC 50, 51 (Jan. 2026) (citing *Heidelberg Materials US Cement LLC*, 45 FMSHRC 1004, 1005 (Dec. 2023)). Here, however, Mitsubishi does not provide sufficient information regarding when its Safety Superintendent discovered that the penalty was a final order, stating only that its delinquency was discovered "recently." The Commission has denied motions to reopen when the operator failed to explain the reasons for a delay in filing its motion to reopen. *See*, *e.g*., *Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion).

We conclude that in the absence of a sufficient explanation, Mitsubishi has not demonstrated good cause for its failure to timely respond. *See Higgins Stone Co*., 32 FMSHRC 33, 34 (Jan. 2010) (requiring that "[a]t a minimum, the applicant must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator's knowledge, for the failure to submit a timely response."). Accordingly, the motion to reopen is denied.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 21, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. PAULSEN INC.	Docket No. CENT 2026-0069 A.C. No. 25-00540-630877

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 January 16, 2026, the Commission received from Paulsen Inc., ("Paulsen") a motion to reopen 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) 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).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on December 2, 2025, and became a final order of the Commission on January 2, 2026.

Paulsen contends that it did not timely file to contest because it mistakenly paid the penalties. In an attached affidavit the Aggregate Division Manager, certified that "the penalties were paid based upon mistake or inadvertence." Ex. A. The manager further explains that she believed that the citations had been issued to "one of Paulsen's other locations that had recently been inspected." Ex. A.

The Secretary opposes the operator's motion, contending that the operator's asserted reason for failing to timely file lack required detail. We agree.

Paulsen's motion lacks specificity. For instance, it does not contain the identity of Paulsen's second mine or the date upon which the inspection occurred. The Commission has consistently required that the operator provide known details, including dates and persons involved, when proffering an explanation to account for their failure to timely file. *See Higgins Stone Co*., 32 FMSHRC 33, 34 (Jan. 2010). General assertions are insufficient when an operator seeks a grant of relief pursuant to Rule 60(b). *See Southwest Rock Products, Inc.*, 45 FMSHRC 747-48 (Aug. 2023).

Furthermore, the Secretary has called the veracity of Paulsen's position into question. The Secretary represents that MSHA has *not* received payment for the civil penalties at issue. In fact, the Secretary's Mine Data Retrieval System reflects that the civil penalties for the four citations at issue remain unpaid.[1] MSHA, *Mine Data Retrieval System*, https://www.msha.gov/data-and-reports/mine-data-retrieval-system (last visited, May 20, 2026).

For these reasons, we find that Paulsen has failed to establish good cause for a failure to timely file. Its motion is denied with prejudice.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

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[1] Citation Nos. 6947802, 6947803, 6947804, and 6947805 are listed as delinquent unpaid penalties in the MDRS.

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May 21, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. STILLWATER MINING COMPANY	Docket No. WEST 2025-0254 A.C. No. 24-01490-618777

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 December 10, 2025, the Commission received from Stillwater Mining Company ("Stillwater") a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On September 10, 2025, the Chief Administrative Law Judge issued an Order to Show Cause in response to Stillwater's perceived failure to answer the Secretary of Labor's July 10, 2025 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on October 11, 2025, when it appeared that the operator had not filed an answer within 30 days.

The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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""); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Stillwater contends that on September 17, 2025, it timely mailed an Answer to the Show Cause Order to the Commission. Attached to its motion to reopen, Stillwater provides corroborating United States Postal Service tracking records. Mot. at 2 (R. Ex. 4). Stillwater maintains that it mistakenly failed to include a docket number with its Answer, which it asserts may have contributed to the Commission's belief that an Answer was not received. The Commission has no record of receiving the Answer. Stillwater attached a copy to its motion to reopen.

Stillwater further represents that it moved quickly after it received a November 26, 2025, delinquency notice from MSHA. On December 10, 2025, the operator filed the motion to reopen with the Commission. Stillwater maintains that its original timely payment of certain penalties in the proposed assessment and the timely filing to contest other penalties indicates an intent to comply with applicable deadlines. The Secretary takes no position with respect to the operator's motion.

The Commission recognizes that a motion to reopen is filed within a reasonable amount of time if it was filed within 30 days of the operator's first notice that it had failed to timely file. *See e.g., Highland Mining Co*., 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the motion to reopen was filed quickly after the operator received first notice of its error. Furthermore, the operator appears to have timely filed an Answer to the Show Cause Order, although it mistakenly lacked an appropriate docket number. The operator's timely filing of an Answer and its quick response upon realizing that it made a mistake indicates a good faith effort to comply. *See Explosive Contractors, Inc*., 46 FMSHRC 965, 966 (Dec. 2024) (citations omitted) ("[a] movant's good faith and intent to contest are both relevant in determining whether the movant has demonstrated good cause to reopen a final assessment.").

We conclude that the operator has established that its perceived failure to timely respond to the Commission's Order to Show Cause was the result of a docketing mistake. In the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, 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.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

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May 21, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. QUIKRETE CONSTRUCTION MATERIALS, LLC	Docket No. WEVA 2025-0541 A.C. No. 46-00007-624989

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 September 9, 2025, the Commission received from Quikrete Construction Materials, LLC, ("Quikrete") a motion to reopen 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) 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).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that a proposed penalty assessment was delivered to Quikrete on July 22, 2025, and became a final order of the Commission on August 21, 2025, when the operator did not file to contest.

Quikrete maintains that it failed to timely file for good cause. It represents that on May 26, 2025, its Martinsburg plant manager resigned; he had been responsible for contesting proposed assessments. On July 28, 2025, the operator named a new plant manager. On September 3, 2025, after being alerted by outside counsel that the subject citations were listed as delinquent in the Secretary's Mine Data Retrieval System, the operator promptly filed the motion to reopen.

The Secretary does not oppose the operator's request, noting that Quikrete has no delinquent penalties and a good history of either timely paying or contesting penalties.

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 (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 gap, rather than inadequate procedures. The proposed assessment was delivered to the mine six days prior to the beginning of the new manager's term.

Furthermore, the operator's proactive filing of a motion to reopen promptly after the discovery of the error demonstrates 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 Quikrete'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.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

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May 21, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. HOOPERS CREEK STONE, LLC	Docket No. SE 2025-0153 A.C. No. 31-02108-623964

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 January 15, 2026, the Commission received from Hoopers Creek Stone, LLC, "(Hoopers Creek") a motion which we construe as a motion to reopen a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On November 14, 2025, the Chief Administrative Law Judge issued an Order to Show Cause in response to Hoopers Creek's perceived failure to answer the Secretary of Labor's August 4, 2025 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on December 15, 2025, when it appeared that the operator had not filed an answer within 30 days.

The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

On January 15, 2026, the Commission received a document which appeared to be the operator's late-filed Answer. While its response could also be construed as a motion to reopen the final order, the motion does not assert good cause for the operator's failure to timely file. The Secretary opposes the operator's motion and requests that the Commission deny the motion without prejudice.

An operator seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief. In addition to providing all known details, including relevant dates and persons involved, the operator must provide a clear explanation that accounts for the operator's failure to timely file. *See Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010).

Because Hoopers Creek's request for relief does not explain the company's failure to respond to the Judge's show cause order, and is not based on any of the grounds for relief set forth in Rule 60(b), we hereby deny the request for relief without prejudice. *See FKZ Coal Inc.*, 29 FMSHRC 177, 178 (Apr. 2007). The words "without prejudice" mean that Hooper's Creek may submit another request to reopen the assessment.[1]

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

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[1] If Hoopers Creek submits another request to reopen, it must establish good cause for not responding to the Judge's November 14, 2025 Order to Show Cause. Under Rule 60(b) of the Federal Rules of Civil Procedure, the existence of "good cause" may be shown by a number of different factors including mistake, inadvertence, surprise, or excusable neglect on the part of the party seeking relief, or the discovery of new evidence, or fraud, misrepresentation, or other misconduct by the adverse party. Fed. R. Civ. P. 60(b). Hoopers Creek should include a full description of the facts supporting its claim of "good cause," including how the mistake or other problem prevented it from responding within the time limits provided in the Judge's order, as part of its request to reopen. Hoopers Creek should also submit copies of supporting documents with its request to reopen.

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May 21, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. MOUNTAIN STONE AGGREGATES	Docket No. WEST 2026-0003 A.C. No. 45-03769-623672

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 November 10, 2025, the Commission received from Mountain Stone Aggregates ("Mountain Stone") a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

In its motion, Mountain Stone represents that it did not receive the subject proposed penalty assessment from the Mine Safety and Health Administration ("MSHA"). Instead, the operator contends that MSHA has—on multiple occasions—sent mail to the wrong address. The Secretary does not oppose the operator's request. The United States Post Office tracking records attached to the Secretary's response indicate that the assessment was not delivered to Mountain Stone because of an "insufficient address." Sec'y Ex. B. The Secretary represents that it will work with the operator to resolve issues with the description of the operator's physical address, which may contribute to problems with delivery.[1]

Having reviewed Mountain Stone's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because it was not properly served on the operator. The Commission has held that when an assessment is sent to an improper address, it does not become a final order, so a request to reopen the assessment is moot. *See Petra Materials*, 32 FMSHRC 1113, 1116 (Sept. 2010); *see also, e.g.,*

[1] We note that the Commission has already addressed a motion to reopen from Mountain Stone with the same issue arising from a proposed assessment issued four months later. *Mountain Stone Aggregate*, 48 FMSHRC 35 (Jan. 2026). If it has not done so already, MSHA should take prompt action to update its records so that this problem does not reoccur.

American Sand Co. LLC, 42 FMSHRC 767 (Oct. 2020) (applying this principle to an order of default when the Chief Judge's order to show cause was sent to the wrong address).

Accordingly, we hold that there is no final order and the operator's motion to reopen is moot. The 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.

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Chair

/s/ Mary Lu Jordan
Mary Lu Jordan, Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

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ADMINISTRATIVE LAW JUDGE ORDERS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE
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May 29, 2026

ROBERT THOMAS, Complainant, v. CALPORTLAND COMPANY, Respondent.	DISCRIMINATION PROCEEDING Docket No. WEST 2018-0402-DM MSHA Case No. WE-MD-2018-06 Mine: Sanderling Dredge Mine ID: 45-03687
SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner, v. CALPORTLAND COMPANY, Respondent.	CIVIL PENALTY PROCEEDING Docket No. WEST 2019-0205 Mine: Sanderling Dredge Mine ID: 45-03687

ORDER TO REINSTATE
ORDER TO PAY
ORDER FOR SUPPLEMENTAL BRIEFING

Before: Judge Paez

This consolidated proceeding is before me upon an Order of Remand—issued by the Commission on December 4, 2025—to calculate any damages and interest owed to Complainant Robert Thomas ("Thomas"). The matter arises out of a complaint of discrimination brought by Thomas against CalPortland Company ("CalPortland"), pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, ("Mine Act"), 30 U.S.C. § 815(c)(3). Nearly seven-and-a-half years have passed since ALJ Miller's finding of discrimination. On April 20, 2026, CalPortland exhausted all of its appeals. *Thomas v. FMSHRC and CalPortland Co.*, No. 24-1442, 2025 WL 2651299, at *1 (9th Cir. Sep. 16, 2025), *cert. denied*, No. 25-975, 2026 WL 1052123 (U.S. Apr. 20, 2026).

I. HISTORY OF JUDGMENT

On December 10, 2018, ALJ Miller issued a decision and order finding that CalPortland had discriminated against Thomas in violation of section 105(c)(1) of the Mine Act. *CalPortland Co.*, 40 FMSHRC 1503 (Dec. 2018) (ALJ). ALJ Miller also referred her finding of discrimination to the Secretary of Labor ("Secretary") for the assessment of a civil penalty against CalPortland, alongside awarding Thomas $76,185.67 in back pay, lost benefits, plus additional interest. Following that decision, ALJ Miller issued a Supplemental Order for Attorneys Fees and Costs on January 8, 2019, awarding $74,852.05 in attorneys' fees and costs to Thomas. On January 24, 2019, the Secretary assessed a civil penalty of $17,500.00 to CalPortland under Docket No. WEST 2019-0205.

After appeal before the Commission, the U.S. Court of Appeals for the Ninth Circuit rejected the Commission's application of the *Pasula-Robinette* causation standard to section 105(c) cases. *Thomas v. CalPortland Co.*, 993 F.3d 1204 (9th Cir. 2021), *rev'g CalPortland*, 42 FMSHRC 43 (Jan. 2020). The Ninth Circuit then remanded the case to the Commission to apply a "but-for" causation standard. The Commission subsequently remanded the case to ALJ Miller. *CalPortland Co.*, 43 FMSHRC 314 (June 2021).

On remand, ALJ Miller reexamined the facts of this case consistent with the Ninth Circuit's instructions and issued a decision on December 2, 2021, concluding that CalPortland had discriminated against Thomas in violation of the Mine Act. *CalPortland Co.*, 43 FMSHRC 531, 550 (Dec. 2021) (ALJ). Accordingly, ALJ Miller ordered CalPortland to reinstate Thomas to his former position. ALJ Miller further ordered payment of the back pay, lost benefits, interest, and attorneys' fees and costs previously ordered under her December 10, 2018 and January 8, 2019 orders. ALJ Miller also ordered payment of the civil penalty assessed in WEST 2019-0025 to the Secretary, pending exhaustion of CalPortland's appeals. *Id.* Following that decision, ALJ Miller issued an Order for Back Pay and Amended Supplemental Order for Attorney's Fees and Costs on February 9, 2022, awarding Thomas $224,220.15 in additional back pay, lost benefits, and interest as well as an additional $110,558.26 in attorneys' fees and costs incurred during the appeals process. As of the February 9, 2022 order, the total amount of back pay, benefits, interest, attorneys' fees and costs incurred was the sum of $493,652.66.

Thereafter, CalPortland filed a petition for discretionary review with the Commission challenging the Judge's decision, which the Commission granted on January 10, 2022. Additionally, on March 21, 2022, the Commission formally consolidated the above-captioned proceedings and ordered a stay of briefing on the matter of ALJ Miller's February 9, 2022 supplemental order. On review, the Commission reversed ALJ Miller's decision on remand and concluded that Thomas had failed to show that, but for his protected activity, he would not have been suspended or terminated. *CalPortland Co*, 46 FMSHRC 119, 133 (Mar. 2024). Thomas again appealed the Commission's decision to the Ninth Circuit on March 11, 2024.

In an unpublished decision, the Ninth Circuit concluded that the Commission misapplied the substantial evidence standard and that, based on the Judge's findings, the miner had succeeded in his claim. *Thomas v. FMSHRC and CalPortland Co.*, No. 24-1442, 2025 WL 2651299, at 1 (9th Cir. Sep. 16, 2025). The Ninth Circuit vacated the Commission's decision and remanded it stating that "[t]he matter of the ALJ's supplemental order regarding the amount of damages remains to be conclusively resolved." *Id*. at 3. On October 3, 2025, the Ninth Circuit issued its mandate returning the case to the Commission's jurisdiction. CalPortland then exercised its last avenue for appeal by filing a Petition for Writ of Certiorari to the Supreme Court on February 13, 2026. *CalPortland Co. v. Thomas*, No. 25-975 (U.S. Feb. 13, 2026). However, CalPortland's petition was denied on April 20, 2026. *CalPortland Co. v. Thomas*, No. 25-975, 2026 WL 1052123 (U.S. Apr. 20, 2026). This matter was assigned to me on May 15, 2026, to conclusively resolve and calculate any damages and interest owed to Thomas.

II. SECRETARY'S ASSESSMENT OF CIVIL PENALTY

Thomas originally brought this matter individually under Docket No. 2018-0402-DM. Following ALJ Miller's initial December 10, 2018 decision, the Secretary instituted an action for the assessment of a civil penalty of $17,500.00 on January 24, 2019. (Sec'y Penalty Pet.) That civil penalty action remains pending in Docket No. WEST 2019-0205.

Pursuant to the Decision Approving Settlement issued on March 21, 2019, CalPortland has exhausted its appeal and is therefore obligated to pay a civil penalty of $17,500.00 plus any applicable interest through the date of payment, to be calculated by the parties within 30 days of this Order. *Thomas v. FMSHRC and CalPortland Co.*, No. 24-1442, 2025 WL 2651299, at *1 (9th Cir. Sep. 16, 2025), *cert. denied*, No. 25-975, 2026 WL 1052123 (U.S. Apr. 20, 2026).

III. DAMAGES AND RELIEF

A. Robert Thomas' Back Pay and Lost Benefits

The Mine Act gives the Commission the authority in proceedings under section 105(c)(3) to assess against an operator "a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the miner." 30 U.S.C. § 815(c)(3). The Commission determined back pay "is the sum a miner would have earned but for the discrimination, less his net interim earnings. Gross back pay encompasses not only wages, but also any accompanying fringe benefits, payments, or contributions constituting integral parts of an employer's overall wage-benefit package." *Shamrock Coal Co.*, 15 FMSHRC 972, 976 (June 1993). An award of attorneys' fees is "a matter that lies within the sound discretion of the trial judge." *E. Assoc. Coal Corp.*, 7 FMSHRC 2015, 2027 (Dec. 1985).

As part of ALJ Miller's initial December 10, 2018 decision in this matter, CalPortland was ordered to pay $76,185.67, plus quarterly interest at the Federal underpayment rate through the date of payment, in backpay and lost benefits to Thomas. *CalPortland Co.*, 40 FMSHRC 1503, 1517–18 (Dec. 2018) (ALJ). Thereafter, as part of ALJ Miller's February 9, 2022 supplemental order, CalPortland was ordered to pay an additional $224,220.15, plus quarterly interest at the Federal underpayment rate through the date of payment, in backpay and lost benefits to Thomas. Both **ORDERS** are hereby **REINSTATED**.

Additionally, I adopt ALJ Miller's reasoning in her February 9, 2022 Supplemental Order regarding whether CalPortland was denied an opportunity to explore Thomas' mitigation efforts and conclude that back pay is appropriate. Order for Back Pay and Amended Supplemental Order for Attorney's Fees and Costs at 3 (Feb. 9, 2025) (holding that "Respondent did not object to the Court's order to file information when it was issued, and it did not request a hearing to investigate these matters").

Furthermore, CalPortland remains liable for Thomas' backpay that accrues up until the time at which he is reinstated. *See Ark.-Carbona Co.*, 5 FMSHRC 2042, 2052 n.14 (Dec. 1983) (holding that "[i]n a discrimination case where, as here, there has been an illegal discharge, the back pay period normally extends from the date of the discrimination to the date a bona fide offer of reinstatement is made."); *cf. Inda v. United Air Lines, Inc.*, 405 F.Supp. 426, 435 (N.D. Cal. 1975) (holding that, under Title VII, "United is further liable to plaintiffs for back pay in 1975 until such time as they are reinstated pursuant to this Court's order."). If the prevailing employee is not reinstated during the appellate process, the backpay period remains open and encompasses the time that the appeal was pending. *Cf. Taylor v. Philips Industries, Inc.*, 593 F.2d 783, 788 (7th Cir. 1979) (holding that, under Title VII, "[b]ecause we hold that Taylor was the victim of unlawful discrimination, the relief should cover the period up until the date of her reinstatement, including the time occupied by this appeal.").

Accordingly, the parties are **ORDERED** to submit additional documentation regarding Thomas' backpay that has accrued since ALJ Miller's February 9, 2022 supplemental order. Thomas shall submit his accounting of the backpay and quarterly interest at the Federal underpayment rate within twenty days of the date of this Order, and CalPortland shall submit a response within twenty days of Thomas' filing.

B. Attorneys' Fees and Costs

Thomas is also entitled to reasonable attorneys' fees and costs. 30 U.S.C. § 815(c)(3). To evaluate reasonableness, courts typically consider an attorney's reasonable hourly rate and whether the number of hours expended on the case was reasonable. *See Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550–53 (2010).

Following ALJ Miller's initial decision, CalPortland was ordered on January 8, 2019 to pay Thomas $74,852.05 in attorneys' fees and costs. Additionally, as part of ALJ Miller's February 9, 2022 supplemental order, CalPortland was ordered to pay an additional $110,558.26 in attorneys' fees and costs. ALJ Miller also ordered payment of quarterly interest at the Federal underpayment rate through the date of payment, but solely on Thomas' initial award of $74,852.05. Both **ORDERS** are hereby **REINSTATED**.

Additionally, I adopt ALJ Miller's reasoning in her February 9, 2022 Supplemental Order regarding whether the Commission lacks the authority to award attorney's fees based on legal work performed while this case was before the Ninth Circuit and conclude that an award of attorney's fees is appropriate. Order for Back Pay and Amended Supplemental Order for Attorney's Fees and Costs at 4–5 (Feb. 9, 2025) (holding that "[s]uch authority is inapposite in the context of the Mine Act [as it] . . . has no such provision. In fact, the text of the Mine Act supports a much broader interpretation of the sort of fees available to the prevailing miner in a case under section 105(c)(3)").

Additionally, Thomas shall submit itemized invoices for additional attorneys' fees and costs incurred during the appeals process since February 9, 2022. It is hereby **ORDERED** that Thomas shall submit his accounting of attorneys' fees within twenty days of the date of this Order, and CalPortland shall submit a response within twenty days of Thomas' filing.

IV. ORDER

WHEREFORE, Respondent is hereby **ORDERED** to **REINSTATE** Robert Thomas to his former position with CalPortland with the same pay and benefits as he would have accrued had he remained employed. The mine shall remove from Thomas' personnel file any mention of any employment action stemming from this incident and shall post a notice at the nearest CalPortland land-based office, in a conspicuous location, and on paper at least 8" x 10" size, setting forth the rights of miners protected by 105(c) of the Mine Act.

Respondent is further **ORDERED** to **PAY** back pay and lost benefits to Thomas in the amount of **$300,405.82** within 30 days of the date of this Order.

Respondent is further **ORDERED** to **PAY** attorneys' fees and costs to Thomas in the amount of **$185,410.31** within 30 days of the date of this Order.

Complainant is **ORDERED** to submit, within twenty days, his updated estimates of:

(1) the backpay, lost benefits, and quarterly interest at the Federal underpayment rate to which he is entitled for the period between February 9, 2022, and the date of this Order;

(2) the reasonable attorneys' fees and costs incurred between February 9, 2022, and the date of this Order;

(3) the quarterly interest owed on Thomas' initial back pay and lost benefits award of $300,405.82 at the Federal underpayment rate through the date of payment; and

(4) the quarterly interest owed on Thomas' initial attorneys' fees and costs award of $185,410.31 at the Federal underpayment rate through the date of payment. *See* Internal Revenue Service, *Quarterly interest rate*, IRS (May 29, 2026), https://www.irs.gov/payments/quarterly-interest-rates.

Respondent is **ORDERED** to submit its response to the Complainant's estimate within twenty days of service of the Complainant's submission.

Respondent is **FURTHER ORDERED** to **PAY** a civil penalty in Docket No. WEST 2019-0205 of **$17,500.00** plus any applicable interest through the date of payment within 30 days of this Order.[1] Respondent is directed to contact MSHA's Office of Assessments to determine any applicable interest.

/s/ Alan G. Paez
Alan G. Paez
Administrative Law Judge

[1] Please pay penalties electronically at Pay.Gov, a service of the U.S. Department of the Treasury, at https://www.pay.gov/public/form/start/67564508.

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/JPN