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SOL (MSHA) V. LAKEVIEW ROCK PRODUCTS  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 95-56-M
	:	
LAKEVIEW ROCK PRODUCTS, INC.	:	

BEFORE: Jordan, Chairman; Doyle, Holen, and Marks, 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. (1988) ("Mine Act"). On November 16, 1994, the Commission received from Lakeview Rock Products, Inc. ("Lakeview") a request to reopen an uncontested civil 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).

Section 105(a) requires the Secretary of Labor to notify the operator of "the civil penalty proposed to be assessed" after issuing a citation or order for an alleged violation. 30 U.S.C. 815(a). Section 105(a) allows the operator 30 days to contest a proposed penalty and further provides that, if the operator fails to contest it, the assessment "shall be deemed a final order of the Commission and not subject to review by any court or agency." Id. Lakeview failed to contest within 30 days a notice of proposed assessment of civil penalties in the amount of \$32,250 and, accordingly, it has become a final order of the Commission.

Lakeview states that it failed to file with the Department of Labor's Mine Safety and Health Administration ("MSHA") a "Green Card" notice of contest challenging MSHA's proposed civil penalties within the 30-day period set forth in section 105(a), due to a mistake in calculating that period. It asserts that it filed only one day late, that the Secretary was not prejudiced by the delay, and that "the existence of its business is threatened" by the amount

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of the penalties. Petition at 6. The Commission has held that, in appropriate circumstances and pursuant to Fed. R. Civ. P. 60(b) ("Rule 60(b)"), it possesses jurisdiction to reopen uncontested assessments that have become final under section 105(a). Jim Walter Resources, Inc., 15 FMSHRC 782, 786-89 (May 1993); see also, Rocky Hollow Coal Company, Inc., 16 FMSHRC 1931, 1932 (September 1994).

Relief from a final order is available in circumstances such as a party's mistake, inadvertence, or excusable neglect.

On the basis of the present record, we are unable to evaluate the merits of Lakeview's position. In the interest of justice, we reopen the matter and remand it for assignment to a judge to determine whether Lakeview has met the criteria for relief under Rule 60(b). If the judge determines that relief under Rule 60(b) is appropriate and permits Lakeview to file its notice of contest, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

For the foregoing reasons, Lakeview's request is granted and this matter is remanded for assignment.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc L. Marks, Commissioner