

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

October 31, 2013

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2012-532-M
v.	:	A.C. No. 26-00550-270258 P8D
	:	
AMEC EARTH & ENVIRONMENTAL, INC.	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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. (2006) (“Mine Act”). On March 13, 2013, the Commission received from AMEC Environment & Infrastructure, Inc., formerly AMEC Earth & Environmental, Inc., (“AMEC”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On October 4, 2012, Chief Administrative Law Judge Lesnick issued an Order to Show Cause which by its terms became a Default Order if the operator did not file an answer within 30 days. This Order to Show Cause was issued in response to AMEC’s failure to answer the Secretary’s March 2, 2012 Petition for Assessment of Civil Penalty.

AMEC asserts that it did not receive the penalty petition nor the Show Cause Order because they were mailed to its old address. AMEC further states that it discovered the error after receiving a Substitution of Counsel letter which was mailed to its new address. The Secretary does not oppose the request to reopen, and confirms that both the penalty petition and the Show Cause Order were sent to AMEC’s old address and returned undelivered.

Pursuant to Commission Procedural Rule 66, an order to show cause shall be mailed to the party by registered or certified mail, return receipt requested, before the entry of any order of default or dismissal. 29 C.F.R. § 2700.66. Having reviewed AMEC's request and the Secretary's response, we conclude that the operator did not receive the penalty petition and Show Cause Order, and therefore a Default Order has not been effectively entered. 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/ Mary Lu Jordan
Mary Lu Jordan, Chairman

/s/Michael G. Young
Michael G. Young, Commissioner

/s/ Robert F. Cohen, Jr.
Robert F. Cohen, Jr., Commissioner

/s/ Patrick K. Nakamura
Patrick K. Nakamura, Commissioner

/s/ William I. Althen
William I. Althen, Commissioner

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Chief Administrative Law Judge Robert J. Lesnick
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