

**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 2012-766-M
v.	:	A.C. No. 04-04075-284283 LGH
	:	
O & M INDUSTRIES	:	

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 April 15, 2013, the Commission received from O & M Industries (“O&M”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On November 1, 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 O&M’s failure to answer the Secretary’s May 7, 2012 Petition for Assessment of Civil Penalty.

O&M asserts that it never received the penalty petition or Show Cause Order because they were mailed to an old address. O&M states that it learned of the delinquency after mistakenly paying it, thinking it was a different case. The Secretary does not oppose the request to reopen and acknowledges that the penalty petition and Show Cause Order were mailed to an outdated address.

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 O&M'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

Distribution:

Virginia Siegel  
O & M Industries  
5901 Ericson Way  
Arat, CA 95521

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., Room 2220  
Arlington, VA 22209-2296

Melanie Garris  
Office of Civil Penalty Compliance  
MSHA  
U.S. Dept. Of Labor  
1100 Wilson Blvd., 25<sup>th</sup> Floor  
Arlington, VA 22209-3939

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Avenue, N. W., Suite 520N  
Washington, D.C. 20004-1710