

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

DEC 30 2014

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. YORK 2012-123-M
v.	:	A.C. No. 17-00576-282499
	:	
HARRY C. CROOKER & SONS, INC.	:	

BEFORE: Nakamura, Acting Chairman; Cohen 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. (2012) (“Mine Act”). On July 31, 2013, the Commission received from Harry C. Crooker & Sons, Inc., (“Crooker”) a revised motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On August 23, 2012, the Chief Administrative Law Judge issued an Order to Show Cause in response to Crooker’s failure to answer the Secretary of Labor’s April 2, 2012 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on September 24, 2012, when it appeared that the operator had not filed an answer within 30 days.

Crooker asserts that it had sent a timely answer to the Order to Show Cause to the Department of Labor and the Commission. The Secretary does not oppose the request to reopen and confirms that Crooker sent its answer on September 12, 2012.

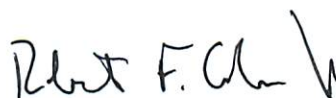
Having reviewed Crooker’s request and the Secretary’s response, we conclude that the operator was not in default under the terms of the Order to Show Cause as it timely complied with the Order. *See Vulcan Construction Materials*, 33 FMSHRC 2164 (Sept. 2011). This renders the Default Order a nullity. Accordingly, the operator’s motion to reopen is moot, and

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.



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Patrick K. Nakamura, Acting Chairman



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Robert F. Cohen, Jr., Commissioner



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William I. Althen, Commissioner

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