

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)

v.

SIERRA ROCK & DIRT, INC.

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Docket No. WEST 2014-42-M
A.C. No. 24-02115-331596-02

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 June 3, 2014, the Commission received from Sierra Rock & Dirt, Inc., (“Sierra”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

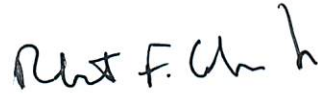
On February 25, 2014, the Chief Administrative Law Judge issued an Order to Show Cause in response to Sierra’s perceived failure to answer the Secretary of Labor’s November 22, 2013 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on March 28, 2014, when it appeared that the operator had not filed an answer within 30 days.

Sierra asserts that it had filed a timely answer to the Petition for Assessment of Civil Penalty. The Secretary does not oppose the request to reopen and notes that this case was split into two dockets, WEST 2014-41-M and WEST 2014-42-M. The Secretary confirms that the operator sent a timely answer that included all citations for both dockets, but that the answer was labeled with only one docket number, WEST 2014-41-M.

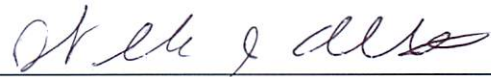
Having reviewed Sierra’s request and the Secretary’s response, we conclude that the operator was not in default under the terms of the Order to Show Cause as it filed a timely response to the penalty petition. *See Eagle Creek Mining, LLC*, 35 FMSHRC 781, 782 (Apr. 2013). This renders the Default Order 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.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

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