

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**March 9, 2026**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

KALAMAZOO MATERIALS INC.,

Docket No. WEST 2025-0326  
A.C. No. 02-02520-610896

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

**ORDER**

BY: Rajkovich, Chair; Jordan, and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On July 23, 2025, the Commission received from Kalamazoo Materials Inc., (“Kalamazoo”) a motion seeking to reopen a 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). The Secretary opposes the operator’s request.

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

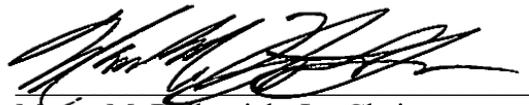
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on December 12, 2024. The assessment became a final order of the Commission on January 11, 2025, after the 30-day contest period expired. On February 26, 2025, the Secretary sent the operator a delinquency letter, noting that the penalties remained unpaid. On May 28, 2025, the Secretary sent the operator a “scofflaw letter” warning of escalating penalties if the fines continued to remain unpaid.

On July 23, 2025, Kalamazoo forwarded a copy of the Secretary’s May 28th letter to the Commission with an accompanying attachment listing citations and unpaid penalties.<sup>1</sup> We construe this filing as a request to reopen the final order.

In *Higgins Stone Company, Inc*, 32 FMSHRC 33, 34 (Jan. 2010) the Commission stated:

An operator seeking to reopen a proceeding after a final order is effective bears the burden of establishing an entitlement to extraordinary relief. At a minimum, the applicant for such relief must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator's knowledge, for the failure to submit a timely response and for any delays in seeking relief once the operator became aware of the delinquency or failure. The operator must also identify which specific citations or orders in the assessment it wishes to contest upon reopening. Affidavits from persons involved in and knowledgeable of the situation and pertinent documents should be included with the request to reopen.

Kalamazoo’s motion does not provide an explanation for its failure to timely file. Accordingly, the operator has not demonstrated a good cause reason for its failure to timely file. The motion is denied.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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<sup>1</sup> Citation No. 9999735 and the associated penalty of \$12,089 was highlighted in yellow.

Commissioner Marvit, concurring:

I write to agree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, 46 FMSHRC 965 (Dec. 2024), I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975 (citing *Hancock Materials, Inc.*, 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's order became final under the language of section 105(a). The Majority denies reopening in its opinion because the operator has not alleged good cause or provided a factual accounting for its failure to timely contest the penalties. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority in denying reopening in this matter.



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Moshe Z. Marvit, Commissioner

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