

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

MAR 2:8 2017

v.

CARROLL COUNTY STONE, INC.

:
: Docket No. CENT 2015-475-M
: A.C. No. 03-01232-379841
:
:

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 October 30, 2015, the Commission received from Carroll County Stone, Inc. (“Carroll County”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On August 4, 2015, the Chief Administrative Law Judge issued an Order to Show Cause in response to Carroll County’s perceived failure to answer the Secretary of Labor’s June 29, 2015 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on September 4, 2015, when it appeared that the operator had not filed an answer within 30 days. MSHA mailed a delinquency notice to the operator on October 21, 2015.

Carroll County asserts that it timely filed its answer to the Order to Show Cause in the same envelope as another case involving a sister company, Bailey Quarries, Inc., and that the two cases were mixed up by the Commission. Commission records confirm that it received responses for both cases, CENT 2015-363-M and CENT 2015-475-M on August 28, 2015. The Secretary does not oppose the request to reopen.

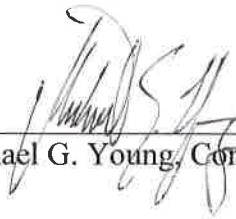
Having reviewed Carroll County's request and the Secretary's response, we conclude that the operator was not in default under the terms of the Order to Show Cause because it timely complied with the Order. *See Vulcan Construction Materials*, 33 FMSHRC 2164 (Sept. 2011). This renders the Default Order 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.



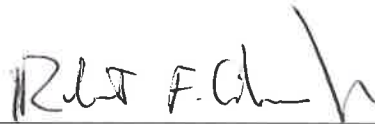
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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