

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

**April 14, 2025**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

CONSOL PENNSYLVANIA COAL  
COMPANY, LLC

Docket No. PENN 2024-0083  
A.C. No. 36-07230-594736

Docket No. PENN 2024-0084  
A.C. No. 36-10045-594741

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

**ORDER**

BY THE COMMISSION

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On May 29, 2024, the Commission received from Consol Pennsylvania Coal Co., LLC (“Consol Penn”) motions seeking to reopen contest proceedings pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).<sup>1</sup>

Under section 105(a), 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

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<sup>1</sup> Consol Penn filed similar motions to reopen relying upon the same reason as the basis for re-opening in two separate dockets. For the limited purpose of addressing the motions to reopen, we hereby consolidate docket numbers PENN 2024-0083 and PENN 2024-0084. *See* 29 C.F.R. §2700.12.

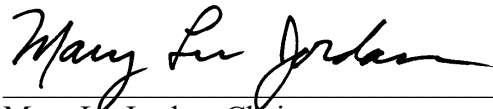
good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessments were delivered to the operator on March 2, 2024. Delinquency letters were sent to the operator on May 17, 2024.

Consol Penn states that it timely contested the proposed penalty assessments when it mailed its contests to MSHA on March 5, 2024. The operator's records indicate that the contests were received at MSHA's Arlington office on March 11, 2024. It also paid the penalties for the citations it did not contest, which were timely received by MSHA.

The Secretary does not oppose the motion. She notes that the contests were timely mailed on March 08, 2024, six days after the U.S. Postal Service delivery date of March 02, 2024, and that MSHA's receipt of the documents were on March 11, 2024, three days after Consol Penn mailed the contests to MSHA. The Secretary further notes that the contests were received in the MSHA mail room, but "due to an inadvertent error," they were not properly distributed to the Civil Penalty Compliance Office in a timely manner. The Secretary informs the Commission that the appropriate parties have been contacted and instructed in the proper method for the future processing of the Civil Penalty Compliance Office's mail. Because the contest was timely received, the Secretary argues that the Commission should deny Consol Penn's motions to reopen as moot and remand these cases for the Secretary to file petitions for the assessment of a civil penalty.

Having reviewed Consol Penn’s request and the Secretary’s response, we conclude that the proposed penalty assessments did not become final orders of the Commission because the operator timely contested the assessments. Section 105(a) states that if an operator “fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission.” 30 U.S.C. § 815(a). Here, Consol Penn notified the Secretary of the contests. This obviates any need to invoke Rule 60(b). See *Chad Buus, Employed By U.S. Steel - Minnesota Ore Operations*, 46 FMSHRC 86, 86-87 (Feb. 2024); *San Benito Supply*, 40 FMSHRC 346, 346–47 (Mar. 2018). Accordingly, the operator’s motion to reopen is moot, and these cases are 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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Mary Lu Jordan, Chair



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Timothy J. Baker, Commissioner



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Moshe Z. Marvit, Commissioner

Distribution:

Marcy Presto  
Safety Analyst  
CONSOL Energy Inc.  
275 Technology Drive, Suite 101  
Canonsburg, PA 15317-6506  
marcypresto@consolenergy.com

Thomas A. Paige, Esq.  
Deputy Associate Solicitor  
US Department of Labor  
Office of the Solicitor  
Division of Mine Safety and Health  
200 Constitution Avenue NW, Suite N4428  
Washington, DC 20210  
Paige.Thomas@dol.gov

Melanie Garris  
US Department of Labor/MSHA  
Office of Assessments, Room N3454  
200 Constitution Ave NW  
Washington, DC 20210  
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn F. Voisin  
Office of the Chief Administrative Law Judge  
Federal Mine Safety Health Review Commission  
1331 Pennsylvania Avenue, NW Suite 520N  
Washington, DC 20004-1710  
GVoisin@fmshrc.gov