

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

JUN 27 2016

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. VA 2015-300-M
v.	:	A.C. No. 44-06068-384434
	:	
BAILLIO SAND COMPANY, INC.	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

**ORDER**

BY THE COMMISSION:

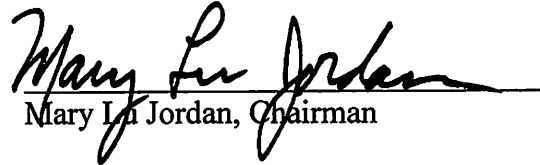
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On August 21, 2015, the Commission received from Baillio Sand Co., Inc., (“Baillio”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

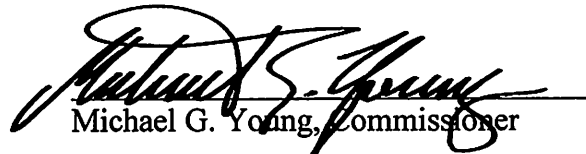
On June 17, 2015, the Secretary mailed the proposed assessment to Baillio by U.S. Postal Service Certified Mail. On August 17, 2015, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

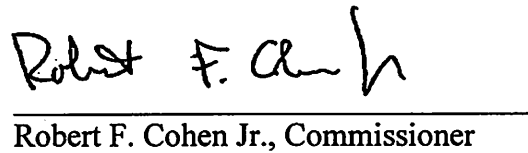
Baillio asserts that it never received the proposed assessment. Tracking information submitted by Baillio shows that the proposed assessment reached the Virginia Beach, VA post office on June 20, 2015, but does not show that the proposed assessment was delivered. The Secretary states that the U.S. Postal Service was not able to locate a signed delivery receipt. The Secretary does not oppose the request to reopen, but notes that the proposed assessment was mailed to the address of record on Baillio’s Mine ID report. The Secretary asserts that he has sent other proposed assessments, which Baillio has contested, to this address.

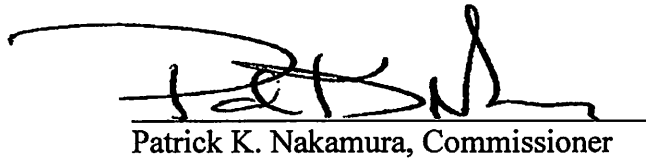
Having reviewed Baillio’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because Baillio did not receive the proposed assessment. *See* 29 C.F.R. § 2700.26 (“[a] person has 30 days after receipt of the proposed penalty assessment within which to notify the Secretary that he contests the proposed penalty assessment.”)

Accordingly, Baillio'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.

  
Mary Lu Jordan, Chairman

  
Michael G. Young, Commissioner

  
Robert F. Cohen Jr., Commissioner

  
Patrick K. Nakamura, Commissioner

  
William I. Althen, Commissioner

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