

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

JUN 30 2016

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

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v.

APOGEE COAL COMPANY, LLC, et
al.¹

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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. (2012) (“Mine Act”). On March 23, 2016, the Commission received a joint motion seeking to reopen 56² penalty assessments issued to subsidiaries of Patriot Coal Corporation (“Patriot”) that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

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

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers WEVA 2016-324, WEVA 2016-325, WEVA 2016-326, WEVA 2016-327, WEVA 2015-343, WEVA 2016-344, WEVA 2016-322, WEVA 2016-323, WEVA 2016-303, WEVA 2016-304, WEVA 2016-305, WEVA 2016-306, WEVA 2016-307, WEVA 2016-308, WEVA 2016-309, WEVA 2016-310, WEVA 2016-311, WEVA 2016-312, WEVA 2016-313, WEVA 2016-315, WEVA 2016-316, WEVA 2016-317, WEVA 2016-318, WEVA 2016-319, WEVA 2016-320, WEVA 2016-321, WEVA 2016-328, WEVA 2016-329, WEVA 2016-330, WEVA 2016-332, WEVA 2016-333, WEVA 2016-334, WEVA 2016-335, KENT 2016-288, WEVA 2016-340, WEVA 2016-341, WEVA 2016-342, WEVA 2016-336, WEVA 2016-337, WEVA 2016-338, WEVA 2016-339, WEVA 2016-348, WEVA 2016-351, WEVA 2016-282, WEVA 2016-295, WEVA 2016-296, WEVA 2016-297, WEVA 2016-298, WEVA 2016-299, WEVA 2016-300, WEVA 2016-301, WEVA 2016-302, WEVA 2016-345, WEVA 2016-346, WEVA 2016-476, and WEVA 2016-347 involving similar procedural issues. 29 C.F.R. § 2700.12. For the sake of brevity, the relevant operator’s names, A.C. numbers, and associated docket numbers have been listed in Exhibit 1, attached to this order.

² On June 16, 2016, the parties filed a joint motion to reopen an additional penalty assessment in addition to the 55 penalty assessments in their original motion.

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).

On or about May 12, 2015, Patriot filed for Chapter 11 bankruptcy in the U.S. District Court for the Eastern District of Virginia. Pursuant to the court-confirmed reorganization plan, Patriot was required to sell substantively all of its assets. For the vast majority of cases, Patriot contends that, due to the issues surrounding the bankruptcy and change in ownership, it was unable to timely contest penalties issued between the time that it declared bankruptcy and when it was able to transfer ownership of its mines. For other cases, Patriot claims that ongoing settlement negotiations made it unclear which penalties needed to be contested. The Secretary agrees that these cases should be reopened.³

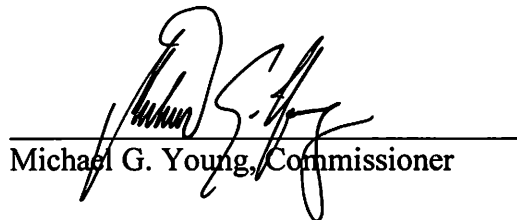
Since the parties filed the joint motion to reopen, events have transpired that affect our consideration of the joint motion. Eastern Associated Coal, LLC, a subsidiary of Patriot, had a motion to reopen Case No. 000389549 (Docket No. WEVA 2016-61) pending before the Commission prior the filing of the joint motion. However, the joint motion also requested that this case be reopened. On April 5, 2016, the Commission granted Eastern Associated Coal’s motion and reopened the case, rendering the joint motion to reopen Docket No. WEVA 2016-308 moot.

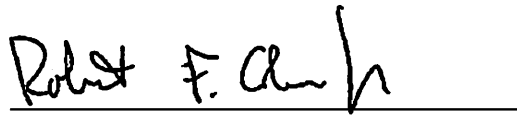
Additionally, in an email dated April 12, 2016, the parties informed the Commission that Case No. 000402707 was not a final order at the time the joint motion was filed and that Midland Trail Energy subsequently filed a timely contest. The contest has since been docketed by the Commission as WEVA 2016-390. As the penalties in this case never became final orders of the Commission, the joint motion to reopen Docket No. WEVA 2016-339 is moot.


³ While it does not affect our consideration of the joint motion, we note that the parties have reached a proposed global settlement as to the all of the proposed penalties. In exchange for the Secretary accepting lower penalty amounts, Patriot has agreed that the Secretary will not be treated as a general unsecured creditor under the reorganization plan. Pursuant to 29 C.F.R. § 2700.31, approval of the proposed settlement will be subject to Commission review on remand.

Having reviewed the joint motion, we conclude that the motion to reopen Docket Nos. WEVA 2016-308 and WEVA 2016-339 are moot. As for the remaining cases, we hereby reopen these matters⁴ and remand them 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. Accordingly, the Secretary shall file petitions for assessment of penalty in each case within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

⁴ Subsequent to the filing of the joint motion, the parties informed the Commission that they only sought to reopen certain penalties associated with Case Nos. 000393531 (WEVA 2016-332), 000394461 (WEVA 2016-351), 000393293 (WEVA 2016-296), and 000394895 (WEVA 2016-305). Accordingly, we reopen those penalties specified in Exhibit 2, attached to this order.

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Exhibit 1

Operator	Docket Number	A.C. Number
Apogee Coal Company, LLC	WEVA 2016-324	46-01368-393525
Apogee Coal Company, LLC	WEVA 2016-325	46-01368-395956
Apogee Coal Company, LLC	WEVA 2016-326	46-08939-400382
Apogee Coal Company, LLC	WEVA 2016-327	46-08939-398390
Brody Mining, LLC	WEVA 2015-343	46-09086-398610
Brody Mining, LLC	WEVA 2016-344	46-09086-396167
Catenary Coal Company, LLC	WEVA 2016-322	46-07178-394670
Catenary Coal Company, LLC	WEVA 2016-323	46-07178-392504
Eastern Associated Coal, LLC	WEVA 2016-303	46-01456-392345
Eastern Associated Coal, LLC	WEVA 2016-304	46-01456-401466
Eastern Associated Coal, LLC	WEVA 2016-305	46-01456-394895
Eastern Associated Coal, LLC	WEVA 2016-306	46-03135-394896
Eastern Associated Coal, LLC	WEVA 2016-307	46-03135-397257
Eastern Associated Coal, LLC	WEVA 2016-308	46-06448-389549
Eastern Associated Coal, LLC	WEVA 2016-309	46-09152-389555
Eastern Associated Coal, LLC	WEVA 2016-310	46-09152-392353
Eastern Associated Coal, LLC	WEVA 2016-311	46-09152-394901
Eastern Associated Coal, LLC	WEVA 2016-312	46-09152-397265
Eastern Associated Coal, LLC	WEVA 2016-313	46-09152-397265
Eastern Associated Coal, LLC	WEVA 2016-315	46-08610-397263
Emerald Processing, LLC	WEVA 2016-316	46-08759-393297
Emerald Processing, LLC	WEVA 2016-317	46-08759-398125
Emerald Processing, LLC	WEVA 2016-318	46-08993-398129
Emerald Processing, LLC	WEVA 2016-319	46-09258-393310
Emerald Processing, LLC	WEVA 2016-320	46-09258-398137
Emerald Processing, LLC	WEVA 2016-321	46-03085-398118
Gateway Eagle Coal Company, LLC	WEVA 2016-328	46-06618-390824
Gateway Eagle Coal Company, LLC	WEVA 2016-329	46-06618-393529
Gateway Eagle Coal Company, LLC	WEVA 2016-330	46-06618-398383
Gateway Eagle Coal Company, LLC	WEVA 2016-332	46-08637-393531
Gateway Eagle Coal Company, LLC	WEVA 2016-333	46-08637-390827
Gateway Eagle Coal Company, LLC	WEVA 2016-334	46-08637-400380
Gateway Eagle Coal Company, LLC	WEVA 2016-335	46-08637-398386
Grand Eagle Mining, LLC	KENT 2016-288	15-16231-393377
Hobet Mining, LLC	WEVA 2016-340	46-04670-393291
Hobet Mining, LLC	WEVA 2016-341	46-05398-393292
Hobet Mining, LLC	WEVA 2016-342	46-05398-398120
Midland Trail Energy, LLC	WEVA 2016-336	46-09297-393779
Midland Trail Energy, LLC	WEVA 2016-337	46-09297-396169
Midland Trail Energy, LLC	WEVA 2016-338	46-09297-398612
Midland Trail Energy, LLC	WEVA 2016-339	46-09297-402707
Remington, LLC	WEVA 2016-348	46-09230-396828
Remington, LLC	WEVA 2016-351	46-09230-394461

Speed Mining, LLC	WEVA 2016-282	46-05437-398121
Speed Mining, LLC	WEVA 2016-295	46-05437-402270
Speed Mining, LLC	WEVA 2016-296	46-05437-393293
Speed Mining, LLC	WEVA 2016-476	46-05437-406785
Speed Mining, LLC	WEVA 2016-297	46-09099-390556
Speed Mining, LLC	WEVA 2016-298	46-09099-393305
Speed Mining, LLC	WEVA 2016-299	46-09099-398132
Speed Mining, LLC	WEVA 2016-300	46-08571-393296
Speed Mining, LLC	WEVA 2016-301	46-08571-398124
Thunderhill Coal Company	WEVA 2016-302	46-08818-393301
Wildcat Energy, LLC	WEVA 2016-345	46-09427-398396
Wildcat Energy, LLC	WEVA 2016-346	46-09427-390835
Wildcat Energy, LLC	WEVA 2016-347	46-09427-393540

Exhibit 2

Eastern Associated Coal, LLC

WEVA 2016-305

46-01456-394895

Citation/ Order Nos.:

9084090

9084135

9084100

9084130

9084097

9084139

9084092

9084098

9084101

9084131

9084136

9084102

9084093

9084137

9084140

9084133

9084138

9084143

9084134

Gateway Eagle Coal Company, LLC

WEVA 2016-332

46-08637-393531

Citation/ Order Nos.:

9055817

9059323

9059325

9055819

9009770

9059327

9059321

9009771

Remington, LLC

WEVA 2016-351

46-09230-394461

Citation/ Order Nos.:

9008107

9008112

9008116

9008108

9008113

9008117

9008109

9008115

9052207

9008110

9054964

9052208

9008111

9053404

Speed Mining, LLC

WEVA 2016-296

46-05437-393293

Citation/ Order Nos.:

9052040

9055592

9056072

9052044

9007911

9055595

9052045

9055593

9056073

9052046

9059120

9052327

9055591

9059121

9055596

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