

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**July 30, 2021**

PALM BEACH AGGREGATES LLC,	:	
	:	
v.	:	Docket No. SE 2020-0067-RM
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. SE 2021-0168
	:	A.C. No. 08-01160-510158
	:	
v.	:	
	:	
PALM BEACH AGGREGATES LLC	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

**DIRECTION FOR REVIEW AND 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) (the “Mine Act”). On June 10, 2020, the contest proceeding in Docket No. SE 2020-0067-RM was dismissed as moot on grounds that the penalty assessment for the citation at issue had become a final order. On June 12, 2020, Palm Beach Aggregates, LLC (“Palm Beach”) filed a motion in Docket No. SE 2020-0067-RM seeking to reopen both the contest proceeding and the related penalty assessment. We construe Palm Beach’s filing as a petition for discretionary review of the order dismissing the contest proceeding, and a motion to reopen the civil penalty proceeding.

Regarding the motion to reopen, 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).

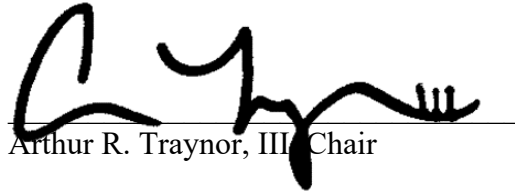
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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 penalty assessment was delivered on March 17, 2020, and became a final order of the Commission on April 16, 2020. Palm Beach asserts that internal processing of the proposed assessment was delayed by the operator’s response to the Covid-19 pandemic. Specifically, a work-from-home policy was initiated on March 16, 2020, before the proposed assessment arrived. As a result, the proposed assessment was not received by the Safety Director until April 23, 2020, and was contested approximately two weeks later. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.


Having reviewed Palm Beach Aggregates’ request and the Secretary’s response, we find that the moderate delay in contesting the proposed penalty assessment was excusable in light of the unusual pandemic-related circumstances. In the interest of justice, we hereby reopen the penalty proceeding. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order.

With regard to the dismissal of the contest proceeding, we grant the operator’s timely petition for discretionary review. 29 C.F.R. § 2700.70. The contest proceeding was dismissed as moot on grounds that the proposed civil penalty for the citation at issue had not been properly contested, and had therefore become a final order. As we have reopened the associated penalty proceeding, we vacate and reverse the Judge’s dismissal order in Docket No. SE 2020-0067-RM.

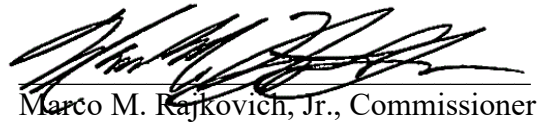
We hereby consolidate the contest and penalty proceedings, and remand this matter to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

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