

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

August 24, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEST 2022-0199
ADMINISTRATION (MSHA)	:	A.C. No. 26-00002-537140
	:	
v.	:	Docket No. WEST 2022-0200
	:	A.C. No. 26-00002-538815
PREMIER MAGNESIA LLC	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, 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”).<sup>1</sup> On April 7, 2021, the Commission received two motions from Premier Magnesia, LLC, seeking to reopen penalty assessments 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 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

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<sup>1</sup> For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket Numbers WEST 2022-0199 and WEST 2022-0200 because they involve similar factual and procedural issues. 29 C.F.R. § 2700.12.

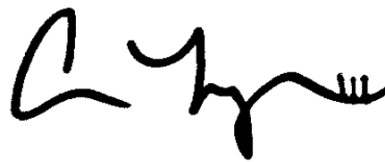
proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Secretary of Labor states that the Department of Labor’s Mine Safety and Health Administration (“MSHA”) mailed the proposed assessments to the operator via U.S. Postal Service Mail. The Secretary contends that the proposed assessment associated with Docket No. WEST 2022-0199 was mailed on June 17, 2021, and was delivered on July 18, 2021; the assessment associated with Docket No. WEST 2022-0200 was mailed on July 15, 2021, and was delivered on August 21, 2021.

The Secretary contends that the proposed assessment in Docket No. WEST 2022-0199 became a final order of the Commission on August 17, 2021, 30 days after its delivery. The proposed assessment in Docket No. WEST 2022-0200 became a final order of the Commission on September 20, 2021, 30 days after its delivery.

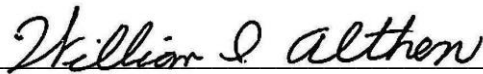
Premier Magnesia asserts that the proposed assessments were not timely contested as a result of inadvertence and due to employee turn-over in its safety department. The new safety manager became aware of the delinquent penalties after reviewing the operator’s violation history on MSHA’s website. The safety manager attests that he has been unable to locate the paperwork for the proposed assessments. The Secretary of Labor does not oppose the motions to reopen.

Having reviewed the operator’s request and the Secretary’s response, we find that the operator’s failure to timely contest the proposed assessments was inadvertent. We hereby reopen these matters, and remand the cases 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, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



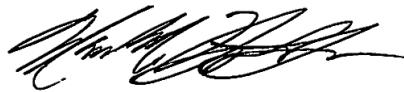
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Arthur R. Traynor, III, Chair



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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner

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