

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**August 30, 2024**

|                              |   |                           |
|------------------------------|---|---------------------------|
| SECRETARY OF LABOR,          | : |                           |
| MINE SAFETY AND HEALTH       | : |                           |
| ADMINISTRATION (MSHA)        | : |                           |
|                              | : | Docket No. WEST 2023-0405 |
| v.                           | : | A.C. No. 26-01941-577560  |
|                              | : |                           |
| TIC - THE INDUSTRIAL COMPANY | : |                           |

BEFORE: Jordan, Chair; Althen, Rajkovich, Baker, and Marvit, Commissioners

**ORDER**

BY THE COMMISSION:

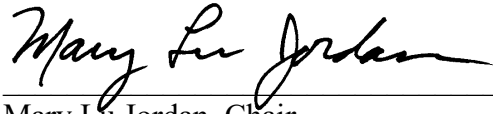
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On September 8, 2023, the Commission received from The Industrial Company (“TIC”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On May 30, 2023, TIC appeared to have received a proposed penalty assessment from the Secretary. On June 29, 2023, the proposed assessment was deemed a final order of the Commission, when the operator did not file a Notice of Contest within 30 days.

TIC asserts that it never received the proposed assessment because it was delivered to the wrong address by the Mine Safety and Health Administration (“MSHA”). According to the operator, it discovered in MSHA’s Mine Data Retrieval System that a penalty for the citation had been issued and was delinquent. The operator’s paralegal contacted MSHA to get a copy of the assessment. She was informed that the assessment was delinquent and had been returned as undeliverable. Prior to filing the contest, TIC had updated its address of record with MSHA on May 8, 2023. However, the change in address was not properly reflected in MSHA’s system and the proposed assessment was mailed to the operator’s old address. The Secretary does not oppose the request to reopen, and argues that the Commission should deny this motion as moot and remand for further proceedings.

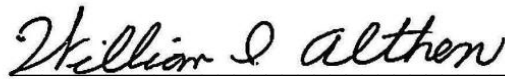
Having reviewed TIC’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because it was never served on the operator. The Commission has held that when an assessment is sent to the wrong address, it does not become a final order, so a request to reopen it is moot. *See Petra*

*Materials*, 32 FMSHRC 1113, 1116 (Sept. 2010); *American Sand Co. LLC*, 42 FMSHRC 767 (Oct. 2020) (applying this principle to an order of default when the Chief Judge’s order to show cause was sent to the wrong address). This obviates any need to invoke Rule 60(b). Accordingly, the operator’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.



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Mary Lu Jordan, Chair



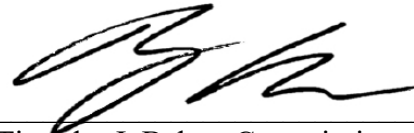
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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner



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Timothy J. Baker, Commissioner



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Moshe Z. Marvit, Commissioner

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