

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

WASHINGTON, DC 20004-1710

**SEP 29 2016**

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

v.

CLAYTON'S CALCIUM INC.,

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: Docket No. WEST 2014-966-M  
: A.C. No. 10-02169-357939  
:  
:

BEFORE: Jordan, Chairman; Young, Cohen, 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 July 17, 2015, the Commission received from Clayton's Calcium, Inc. ("Clayton") a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

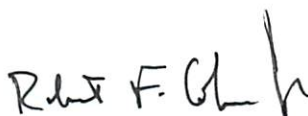
On April 29, 2015, the Chief Administrative Law Judge issued an Order to Show Cause in response to Clayton's failure to answer the Secretary of Labor's September 9, 2014 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on June 1, 2015, when it appeared that the operator had not filed an answer within 30 days.

Clayton claims that it timely responded to the Order to Show Cause but that it used the docket number for another case (WEST 2015-527) involving the same mine. The Secretary does not oppose the request to reopen and confirms receipt of the timely answer. Commission records confirm that the response bearing the incorrect docket number was received on May 26, 2015.

Having reviewed Clayton's request and the Secretary's response, we conclude that the operator was not in default under the terms of the Order to Show Cause as it timely complied with the Order. *See Vulcan Construction Materials*, 33 FMSHRC 2164 (Sept. 2011). This renders the Default Order a nullity. 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, Chairman

  
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Michael G. Young, Commissioner

  
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Robert F. Cohen, Jr., Commissioner

  
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William I. Althen, Commissioner

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