

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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August 12, 2026

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

v.

DURUS INDUSTRIAL

Docket No. WEST 2026-0171  
A.C. No. 02-03398-631641 A3582

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

**ORDER**

BY: Rajkovich, Chair, and Jordan, Commissioner

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On April 3, 2026, the Commission received from Durus Industrial (“Durus”) a motion seeking to reopen a penalty assessment that had become a final order 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 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 assessment was available for pickup at Durus’ P.O. Box on

November 28, 2025, and was deemed a final order of the Commission on December 29, 2025 when the assessment was returned to sender. A delinquency letter was mailed to Durus on March 9, 2026.

Durus asserts that after requesting a conference on the relevant citation in September 2025, it received no further communications from MSHA until March 2026. During that time, it had a good-faith belief that its hearing request was pending. Durus reached out to MSHA after receiving the March delinquency letter, and on April 2, MSHA explained to Durus that the assessment had been mailed to its address of record, marked as unclaimed, and returned to sender. The assessment was mailed to a P.O. Box in Tempe, AZ. Durus states that its correct address is a street address in Chandler, AZ, and that it does not operate a P.O. Box in Tempe. It represents that it has now “submitted a request to confirm and formally correct [its] mailing address.” Durus Reply at 2.

The Secretary opposes the motion to reopen. He asserts that the assessment was available for pickup at Durus’ address of record on November 28, 2025, and Durus’ failure to retrieve it demonstrates an inadequate or unreliable internal mail processing system.<sup>1</sup>

Where an operator fails to timely contest a proposed assessment due to an inadequate or unreliable mail processing system, that is grounds to deny a motion to reopen. *See, e.g., Moose Lake Aggregates, LLC*, 34 FMSHRC 1, 2 (Jan. 2012) (“it is the operator’s responsibility to make sure that its employees receiving mail at its address of record are properly instructed regarding the significance and correct processing of MSHA correspondence”). This can include an ongoing or repeated failure to keep one’s address of record up to date. *E.g., Kiewit Mining Group*, 47 FMSHRC 287, 288 (Apr. 2025) (denying a motion where the operator failed to update its address of record despite repeated prompting); *Cooper Stone, LLC*, 46 FMSHRC 808, 809-10 (Sept. 2024) (denying a motion where the operator identified an issue with its mailing address in 2021 and still had not resolved it in 2023). However, we have granted motions to reopen where the operator’s failure to update its address of record was the result of a single inadvertent failure rather than a systemic issue, and the operator promptly acted to correct its address and reopen the assessment. *E.g., Dyno Nobel*, 46 FMSHRC 397, 398-99 (June 2024); *ITAC*, 46 FMSHRC 80, 81 (Feb. 2024).

Here, Durus’ legal identification form (last updated in 2023) lists the *Chandler* address as the contractor’s principal business address, and the Tempe P.O. Box as the address for quarterly reports. Sec’y Opp. Attach. D. MSHA’s Mine Data Retrieval System also lists the Chandler address for Durus. *See* Mine Data Retrieval System, MSHA, <https://www.msha.gov/data-and-reports/mine-data-retrieval-system> (last visited August 12, 2026). It appears the Secretary delivered the proposed assessment to *an* address of record, but not the *principal* address of record.

Durus has an obligation to monitor and update all addresses of record: if the P.O. Box is still in use then it should have been monitored, and if it is no longer in use then Durus should

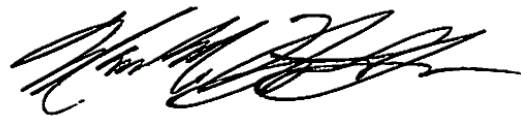
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<sup>1</sup> The Secretary asserts that the assessment and the delinquency letter were both sent to the Tempe address. Durus acknowledges that the assessment was sent to the Tempe address but asserts that the delinquency letter was received at the Chandler address.

have updated its records. Durus should note that a *repeated* failure to monitor or update its address(es) may indicate an inadequate internal process which could result in future motions being denied. Ultimately, however, Durus' failure to retrieve the assessment from a secondary address that was used (at some point) for quarterly reports is an excusable mistake in this instance.

We emphasize that Durus has already started the process of confirming and updating its official mailing addresses (Reply at 2) and that it moved to reopen very promptly upon learning that the assessment had not been timely contested. The Commission has previously held that "[m]otions to reopen received within 30 days of an operator's receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time." *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, Durus received the delinquency letter in mid-March 2026, discussed the matter with MSHA on April 2, and moved to reopen the next day.

Having reviewed Durus' request and the Secretary's response, on balance, we find that Durus' failure to timely contest the assessment was the result of excusable neglect or mistake in failing to monitor or update a secondary address. In the interest of justice, we hereby reopen this matter and remand it 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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Marco M. Rajkovich, Jr. Chair



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Mary Lu Jordan, Commissioner

Commissioner Baker, dissenting:

In *ITAC*, the majority reopened a case where the operator asserted that it had failed to respond because it had not updated its official address with MSHA. 46 FMSHRC 80 (Feb. 2024) (Baker, dissenting). I dissented in that case, arguing that an independent violation of the Mine Act and its regulations did not amount to a “good cause” for reopening. *Id.* at 83.

Specifically, I noted that section 109(d) of the Act requires each operator of a coal or other mine to file with the Secretary of Labor the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names or addresses. 30 U.S.C. § 819(d). Under the authority granted by the Act, the Secretary has promulgated regulations requiring an operator to provide MSHA with, among other things, its correct address of record. 30 C.F.R. § 41.11. If any changes occur with respect to this information, an operator is required to notify MSHA of the change within 30 days of its occurrence. 30 C.F.R. § 41.12. Any failure by an operator to notify MSHA in writing of a change is considered a violation of section 109(d) of the Act and subject to a civil penalty as provided in section 110 of the Act. 30 C.F.R. § 41.13. The regulations further provide:

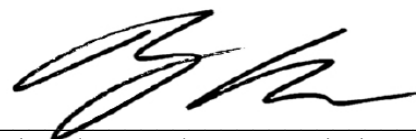
Service of documents upon the operator may be proved by a post office return receipt showing that the documents could not be delivered to such address of record because the operator had moved without leaving a forwarding address or because delivery was not accepted at that address, or because no such address existed.

30 C.F.R. § 41.30.

In light of these statutory and regulatory requirements, the Commission has denied motions to reopen, in part, because the operator failed to maintain its correct address of record. *See Sw. Rock Prod., Inc.*, 45 FMSHRC 747, 748-49 (Aug. 2023). In addition, the Commission has previously held that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *See, e.g., Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010).

In the instant case, it is undisputed that the Secretary sent the assessment to one of the addresses of record provided by the operator. It is significant that the operator only moved to correct its inaccurate address after it received the delinquency notice in this case.

For these reasons, I would find that Durus failed to establish good cause and I would deny Durus’ motion to reopen.



Timothy J. Baker, Commissioner

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