

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

May 21, 2026

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

MOUNTAIN STONE AGGREGATES,

Docket No. WEST 2026-0003  
A.C. No. 45-03769-623672

BEFORE: Rajkovich, Chair; Jordan, and Baker, 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. (2024) (“Mine Act”). On November 10, 2025, the Commission received from Mountain Stone Aggregates (“Mountain Stone”) 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).

In its motion, Mountain Stone represents that it did not receive the subject proposed penalty assessment from the Mine Safety and Health Administration (“MSHA”). Instead, the operator contends that MSHA has—on multiple occasions—sent mail to the wrong address. The Secretary does not oppose the operator’s request. The United States Post Office tracking records attached to the Secretary’s response indicate that the assessment was not delivered to Mountain Stone because of an “insufficient address.” Sec’y Ex. B. The Secretary represents that it will work with the operator to resolve issues with the description of the operator’s physical address, which may contribute to problems with delivery.<sup>1</sup>

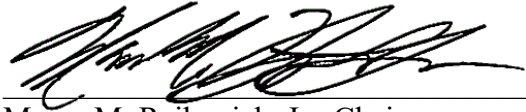
Having reviewed Mountain Stone’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because it was not properly served on the operator. The Commission has held that when an assessment is sent to an improper address, it does not become a final order, so a request to reopen the assessment is moot. *See Petra Materials*, 32 FMSHRC 1113, 1116 (Sept. 2010); *see also, e.g.*,

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<sup>1</sup> We note that the Commission has already addressed a motion to reopen from Mountain Stone with the same issue arising from a proposed assessment issued four months later. *Mountain Stone Aggregate*, 48 FMSHRC 35 (Jan. 2026). If it has not done so already, MSHA should take prompt action to update its records so that this problem does not reoccur.

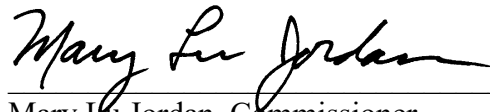
*American Sand Co. LLC*, 42 FMSHRC 767 (Oct. 2020) (applying this principle to an order of default when the Chief Judge’s order to show cause was sent to the wrong address).

Accordingly, we hold that there is no final order and the operator’s motion to reopen is moot. The 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.



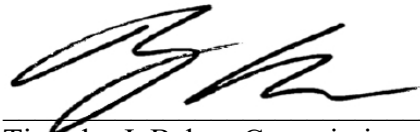
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Marco M. Rajkovich, Jr., Chair



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Mary Lu Jordan, Commissioner



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Timothy J. Baker, Commissioner

Distribution:

Kim Redding, Consultant  
N – Compliance Safety Services, Inc.  
2949 S. Giovanni Ave.  
Meridian, ID 83642  
Redding1562@msn.com

Jennifer A. Ledig, Esq.  
Thomas A. Paige, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Division of Mine Safety and Health  
200 Constitution Avenue NW, Suite N4428  
Washington, DC 20210  
Ledig.jennifer@dol.gov  
Paige.Thomas.a@dol.gov

Melanie Garris  
US Department of Labor/MSHA  
Office of Assessments, Room N3454  
200 Constitution Ave NW  
Washington, DC 20210  
Garris.Melanie@dol.gov

Acting Chief Judge David P. Simonton  
Federal Mine Safety Health Review Commission  
1331 Pennsylvania Avenue, NW Suite 520N  
Washington, DC 20004-1710  
DSimonton@fmshrc.gov