

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.

QUIKRETE CONSTRUCTION
MATERIALS, LLC,

Docket No. WEVA 2025-0541
A.C. No. 46-00007-624989

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 September 9, 2025, the Commission received from Quikrete Construction Materials, LLC, (“Quikrete”) a motion to reopen 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 a proposed penalty assessment was delivered to Quikrete on July 22, 2025, and became a final order of the Commission on August 21, 2025, when the operator did not file to contest.

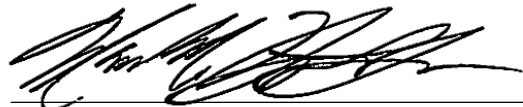
Quikrete maintains that it failed to timely file for good cause. It represents that on May 26, 2025, its Martinsburg plant manager resigned; he had been responsible for contesting proposed assessments. On July 28, 2025, the operator named a new plant manager. On September 3, 2025, after being alerted by outside counsel that the subject citations were listed as delinquent in the Secretary’s Mine Data Retrieval System, the operator promptly filed the motion to reopen.

The Secretary does not oppose the operator’s request, noting that Quikrete has no delinquent penalties and a good history of either timely paying or contesting penalties.

Mistakes related to personnel transition may constitute good cause for a failure to timely file, provided the operator can sufficiently demonstrate that the failure was not the result of inadequate or unreliable office procedures. *See, e.g., Cranesville Aggregates*, 45 FMSHRC 811 (Sept. 2023); *Cf. Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012) (“[t]he Commission has made it clear 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.”). Here, the circumstances demonstrate that the failure to timely file was the result of a short staffing gap, rather than inadequate procedures. The proposed assessment was delivered to the mine six days prior to the beginning of the new manager’s term. Furthermore, the operator’s proactive filing of a motion to reopen promptly after the discovery of the error demonstrates the operator is making a good faith effort to comply with the Commission’s procedures. *See Explosive Contractors, Inc.*, 46 FMSHRC 965, 966 (Dec. 2024) (citations omitted).

Having reviewed Quikrete’s request and the Secretary’s response, in the interest of justice, we hereby reopen this matter and remand it to the Acting 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

Distribution:

Michael T. Cimino, Esq.,
Benjamin J. Wilson, Esq.
Jackson Kelly PLLC,
P.O. Box 553,
Charleston, WV 25301
mcimino@jacksonkelly.com

Jennifer A. Ledwig, 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.a@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