

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 20, 2020

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 : Docket No. SE 2019-0207
v. : A.C. No. 40-00798-494965
 :
AMERICAN SAND CO. LLC :

BEFORE: Rajkovich, Chairman; Althen and Traynor, Commissioners

ORDER

BY THE COMMISSION:

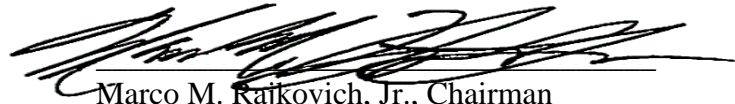
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On December 20, 2019, the Commission received from American Sand Co. LLC (“American Sand”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On October 24, 2019, the Chief Administrative Law Judge issued an Order to Show Cause in response to American Sand’s perceived failure to answer the Secretary of Labor’s August 23, 2019, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on December 16, 2019, when it appeared that the operator had not filed an answer within 20 days.

American Sand asserts that it did not receive the Order to Show Cause because it was sent to the wrong address. The Secretary does not oppose the request to reopen. His response recites two addresses which might have been proper places of service for the operator’s representative, but neither of those is the incorrect address shown on the Order to Show Cause as the service address for the order.¹ There is no proof of delivery in the record.

¹ The incorrect address appears to be the result of a typographical error.

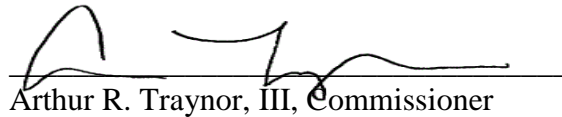
Having reviewed American Sand's request, the Secretary's response, and the record in this case, we find that the Order to Show Cause did not result in a final order of default because it was never served on the operator. Thus, the operator has not been properly found to be in default. Accordingly, the operator's motion is denied as moot. This case remains open, and 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.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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