

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

February 7, 2011

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2010-206-M
v.	:	A.C. No. 20-00552-192595
	:	
DETROIT SALT COMPANY, LLC	:	

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, 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. (2006) (“Mine Act”). On December 9, 2009, the Commission received from Detroit Salt Company, LLC (“Detroit Salt”) a letter 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 section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of mistake, inadvertence, or excusable neglect. *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).

On July 29, 2009, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Penalty Assessment No. 000192595 to Detroit Salt, proposing civil penalties for several citations. In its letter seeking reopening, the operator asserts that it intended to contest the penalty for one of the citations included in that assessment. The letter does not explain why the operator failed to timely contest the penalty but instead indicates that possibly the “Proposed Assessment Case document was missing from the payment packet documents” sent to MSHA.

The Secretary opposes reopening on the ground that in an earlier case Detroit Salt had similarly claimed that it thought it had sent the notice of contest along with the payment to MSHA at its St. Louis, Missouri office. *Detroit Salt Co.*, 31 FMSHRC 759 (July 2009). In that case, the Secretary by letter dated April 20, 2009, did not oppose reopening but specifically reminded the operator of the proper way to contest penalties and warned the operator that she might oppose future reopening requests.

Having reviewed Detroit Salt's request to reopen and the Secretary's response, we deny Detroit Salt's request to reopen this matter. The Secretary's response in the prior case involving Detroit Salt made clear that the form to contest a proposed assessment may not be sent along with payment of uncontested penalties to MSHA's payment processing center in St. Louis.

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Mary Lu Jordan, Chairman

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Michael F. Duffy, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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Patrick K. Nakamura, Commissioner

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