

Big River states that, when it received the proposed penalty assessment, its safety director, who is responsible for reviewing proposed penalties, was absent from the office for training and personal reasons. Big River further states that, after the safety director returned to the office, for some unknown reason, he never received the proposed penalty assessment. Big River states that the safety director learned of the penalties only when he received another assessment and saw the penalties listed.

The Secretary opposes reopening the proposed penalty assessment. The Secretary argues that Big River has made no showing of exceptional circumstances warranting reopening and that an operator's inadequate or unreliable internal processing procedures should not constitute an adequate justification. The Secretary also notes that Big River failed to timely contest assessments in two other dockets in which it sought to reopen final orders because proposed assessments were not in its files.

Having reviewed Big River's request and the Secretary's response, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Big River's failure to timely contest the penalty and whether relief from the final order should be granted.¹ If it is determined that relief from the final order is appropriate, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. § 2700.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

¹ On remand, the judge should consider whether Big River has met the standard for relief in light of its prior failures to adequately track assessments after delivery to its office and warnings from the Secretary that she would oppose future motions to reopen if Big River did not establish adequate procedures to ensure that assessments were timely contested.

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