

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW  
SUITE 9500  
WASHINGTON, DC 20001

March 18, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEST 2005-188-M
ADMINISTRATION (MSHA)	:	A.C. No. 26-00002-24523
	:	
v.	:	Docket No. WEST 2005-189-M
	:	A.C. No. 26-00002-27057
PREMIER CHEMICAL LLC	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

ORDER

BY THE COMMISSION:

These proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”).<sup>1</sup> On February 10, 2005, the Commission received from Premier Chemical LLC (“Premier”) two letters addressed to the Department of Labor’s Mine Safety and Health Administration (“MSHA”) inquiring as to the status of MSHA’s proposed penalty assessments designated A.C. No. 26-00002-24523 and A.C. No. 26-00002-27057. Both penalty assessments had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). We construe the letters as requests that the Commission reopen the penalty assessments.

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).

MSHA issued the proposed assessments on April 15, 2004 (No. 26-00002-24523) and May 13, 2004 (No. 26-00002-27057). Attached to Premier’s requests are letters from MSHA’s

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<sup>1</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers WEST 2005-188-M and WEST 2005-189-M, both captioned *Premier Chemical LLC* and both involving similar procedural issues. 29 C.F.R. § 2700.12.

Office of Assessments. As to No. 26-00002-24523, MSHA explains to Premier that although the company attempted to contest the proposed penalty, it did not do so in a timely manner (the deadline for the contest was May 27, 2004, but MSHA did not receive Premier's contest until June 3, 2004, five days late). Similarly, as to No. 26-00002-27057, MSHA explains to Premier that its contest of the proposed penalty was untimely filed with MSHA (the deadline for the contest was June 23, 2004; MSHA received Premier's contest on July 14, 2004, 21 days late). Premier did not provide any other supporting documentation, nor did it offer any explanation of why it failed to contest the penalty proposals in a timely fashion. The Secretary states that she does not oppose Premier's request for relief.

We have held 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 inadvertence or mistake. *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).

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

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

Distribution

Jennifer Williamson, Safety Coordinator  
Premier Chemical  
Highway 361  
Gabbs, NV 89406

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., 22<sup>nd</sup> Floor West  
Arlington, VA 22209-2247

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001-2021