FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 25, 2006

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	Docket No. WEST 2006-507-M A.C. No. 26-02561-78021
v.	:	
LONGVIEW CONSTRUCTION AND DEVELOPMENT, INC.	:	Docket No. WEST 2006-508-M A.C. No. 26-02651-80870

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, 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. (2000) ("Mine Act").[1] On July 31, 2006, the Commission received from Superior Sand & Gravel, Inc.[2] ("Superior") a letter requesting that the Commission reopen penalty assessments that had become final orders 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).

---

[1] Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers WEST 2006-507-M and WEST 2006-508-M, both captioned *Longview Construction and Development Inc.* and both involving similar procedural issues. 29 C.F.R. § 2700.12.

[2] As explained further in this order, in January 2006, Longview Construction and Development Inc. ("Longview") changed its name to Superior Sand & Gravel, Inc.

In January and February 2006, the Department of Labor's Mine Safety and Health Administration ("MSHA") sent proposed penalty assessments to Longview Construction and Development, Inc. ("Longview") for citations issued to the company by MSHA in April and November 2005. Effective January 2006, however, the company's legal name was changed from Longview to Superior, and the company's address also changed. Superior states in its request that it failed to timely contest the proposed penalty assessments at issue because MSHA had mailed the assessments to its former address and, by the time that it received the assessments in March 2006, more than 30 days had passed. The Secretary states that she does not oppose Superior'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 Superior'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 Superior's failure to timely contest the penalty proposals and whether relief from the final orders 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.[3]

_____
Michael F. Duffy, Chairman

_____
Mary Lu Jordan, Commissioner

_____
Stanley C. Suboleski, Commissioner

_____
Michael G. Young, Commissioner

[3] In the event that this case proceeds, the judge may entertain a motion to amend the case caption to reflect the company's new name, as appropriate.

Distribution

Kathy W. Jones
Superior Sand & Gravel, Inc.
P.O. Box 7019
Bunkerville, NV 89007

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

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