FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W., 6TH FLOOR
WASHINGTON, D. C. 20006-3868

June 10, 1999

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 99-24-M
Petitioner	:	A. C. No. 11-03024-05502
	:	
v.	:	
SPROULE CONSTRUCTION	:	Portable No. 2
COMPANY, INCORPORATED,	:	
Respondent	:	

ORDER TO VACATE DEFAULT
ORDER OF ASSIGNMENT

This case is before me pursuant to order of the Commission dated April 26, 1999.

On April 27, 1999, I issued an order directing the parties to file certain information. On May 27, 1999, the Solicitor filed his response to the April 27 order. The Solicitor advises that MSHA received a letter from the operator on December 16, 1999, and that on December 24 MSHA responded. The Solicitor has provided copies of these letters. With respect to the telephone call from the operator on December 15, the Solicitor merely refers to the statement in MSHA's December 24 letter and offers no independent investigation into the occurrence of the phone call.

On May 27, 1999, counsel for the operator filed its response to the April 27 order. Counsel states that the operator's initial understanding of the December 24 correspondence with MSHA was that it only had to send the appropriate forms to establish a new mining operation and that upon execution of the forms, the matter of standing on the original allegations was placed in abeyance. Counsel claims that the operator sent the forms to MSHA's office in Peru, Illinois and confirmed its understanding and submission with a telephone call. Counsel further argues that at the time the operator received the penalty petition, the operator was not familiar with the applicable Commission procedures and failed to appreciate the significance of the Show Cause Order. The operator was under the mistaken belief that it was already involved in the process to settle and resolve the violations in the penalty petition. Finally, Counsel states that he has been engaged in settlement discussions with the Solicitor.

The Commission has observed that default is a harsh remedy and held that, if the defaulting party can make a showing of adequate or good cause for the failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. Coal Preparation Servs., Inc., 17 FMSHRC 1529, 1530 (Sept. 1995). Here the operator was appearing pro se up until the default order was issued and was not familiar with Commission procedure. In addition, a review of the file shows that the penalty petition was mailed on December 11, 1999. It is

apparent that the operator contacted MSHA when it first received the petition and mistakenly believed that it had resolved this matter. It was this erroneous belief that caused the operator to ignore the show cause order. Therefore, I find that the operator has demonstrated adequate cause to warrant relief from the default order. The operator is now familiar with Commission procedure and is on notice that similar excuses will not be accepted in the future.

Counsel for the operator filed an answer to the penalty petition with his March 25, 1999, motion to vacate the default order. Accordingly, this case is ready for assignment

In light of the foregoing, it is **ORDERED** that the March 15, 1999, default order is hereby **VACATED**.

It is further **ORDERED** that this case is assigned to Administrative Law Judge Jacqueline Bulluck.

All future communications regarding this case should be addressed to Judge Bulluck at the following address:

Federal Mine Safety and Health
Review Commission
Office of Administrative Law Judges
Two Skyline Center, Suite 1000
5203 Leesburg Pike
Falls Church, Virginia 22041

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Paul Merlin
Chief Administrative Law Judge

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