

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

March 22, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. SE 93-262
Petitioner	:	A. C. No. 40-02804-03608
v.	:	
	:	Docket No. SE 93-263
JEN, INC.,	:	A. C. No. 40-02804-03607
Respondent	:	
	:	Docket No. SE 93-288
	:	A. C. No. 40-02804-03610
	:	
	:	Docket No. SE 93-313
	:	A. C. No. 40-02804-03609
	:	
	:	Docket No. SE 93-329
	:	A. C. No. 40-02804-03611
	:	
	:	Docket No. SE 93-330
	:	A. C. No. 40-02804-03612
	:	
	:	Docket No. SE 93-331
	:	A. C. No. 40-02804-03613
	:	
	:	Docket No. SE 93-332
	:	A. C. No. 40-02804-03614
	:	
	:	Docket No. SE 93-346
	:	A. C. No. 40-02804-03615
	:	
	:	Mine No. 39

## ORDER OF DEFAULT

On June 1 and June 28, 1993, the Secretary of Labor (Secretary) filed petitions for the assessment of civil penalties against JEN, Incorporated (JEN) in the above captioned cases. On August 20 and September 15, 1993, orders to show cause were

issued by Judge Merlin directing the operator, JEN, to file its answers to these penalty petitions or show cause why it should not be held in default. The files contain the return receipts showing that JEN received these orders on August 23 and

September 20, 1993. No answers were filed.

On March 8, 1994, Judge Merlin issued yet another order to show cause, allowing JEN a further opportunity to file answers in the captioned cases or show cause why it should not be held in default. No answers were filed by JEN nor did it file any response to the March 8, 1994 order. The file contains the return receipt showing that JEN received the March 8 order on March 12, 1994.

In light of the foregoing, on May 9, 1994, Judge Merlin issued an order of default in the captioned cases and ordered the assessed civil penalties paid immediately.

There the matter stood until October 7, 1994, when the Commission received a letter from JEN's president, Mr. James Nunley, in which he requested relief from the default order, for no particular reason that I am able to discern.

Nevertheless, the Commission on December 19, 1994, "in the interest of justice," reopened these proceedings and remanded the matter to Judge Merlin for assignment to a judge, who should in turn determine whether final relief from default is warranted.

On January 12, 1995, the undersigned issued an order to JEN wherein JEN was "ordered to show cause within 30 days why final relief from default is warranted." I specifically warned that "[i]f it is unable to do so, another default order will issue against JEN for the total amount of the assessed civil penalties, as before." The file contains the return receipt showing that JEN received the January 12 order on January 17, 1995. There has been no response to date.

Accordingly, it is **ORDERED** that the operator be held in **DEFAULT** in the captioned cases and it is further **ORDERED** that the operator pay the total assessed civil penalties in these cases, i.e., \$37,832, immediately.

Roy J. Maurer  
Administrative Law Judge

Distribution:

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