

CCASE:
SOL (MSHA) V. DOW SAND & GRAVEL
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September 17, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket Nos. YORK 93-14-M
v.	:	YORK 93-19-M
	:	YORK 93-20-M
DOW SAND & GRAVEL	:	YORK 93-28-M

BEFORE: Holen, Chairman; Backley, Doyle and Nelson, Commissioners

ORDER

BY THE COMMISSION:

These civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act"). On August 9, 1993, Chief Administrative Law Judge Paul Merlin issued four Orders of Default to Dow Sand & Gravel ("DS&G") for failing to answer the civil penalty proposals filed by the Secretary of Labor ("Secretary") and the judge's April 19, 1993 Orders to Show Cause. The judge assessed civil penalties of \$1,490 as proposed by the Secretary. For the reasons that follow, we vacate the default orders and remand the cases for further proceedings.

On September 7, 1993, E. Milton Dow filed a letter with the Commission requesting that the default orders be set aside. Dow submits that DS&G responded to the show cause orders. Dow also attached a copy of an undated motion by the Secretary for approval of settlement in Dow Sand & Gravel, Docket No. [92]-161-M, in which the Secretary has apparently agreed to a substantial reduction of civil penalties because of DS&G's operating losses and improved attitude toward compliance.

The judge's jurisdiction over these cases terminated when his decision was issued on August 9, 1993. Commission Procedural Rule 69(b), 58 Fed. Reg. 12171 (March 3, 1993), to be codified at 29 C.F.R. 2700.69(b)(1993). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a Petition for Discretionary Review with the Commission within 30 days of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem DS&G's request to be a timely filed Petition for Discretionary Review, which we grant. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988). On the basis of the present record, we are unable to evaluate the merits of DS&G's position. In the interest of justice, we remand these matters to the judge, who shall determine whether default is warranted. See Hickory Coal Co., 12 FMSHRC 1201, 1202 (June 1990).

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For the reasons set forth above, we vacate the judge's default orders and remand these matters for further proceedings.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner