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SOL (MSHA) V. MONARCH CEMENT  
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August 16, 1994

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. CENT 94-96-M
	:	
v.	:	
	:	
MONARCH CEMENT COMPANY	:	
	:	

ORDER

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988) ("Mine Act"). On July 20, 1994, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Monarch Cement Company ("Monarch") for failing to answer the proposal for assessment of penalty filed by the Secretary on March 16, 1994, and the judge's May 16, 1994 Order to Show Cause. The judge assessed the civil penalty of \$506 proposed by the Secretary.

On July 25, 1994, the Commission received a letter from Monarch, addressed to Judge Merlin, requesting that he reconsider the Order of Default. Attached to Monarch's letter of reconsideration were letters, dated March 30, 1994, and May 20, 1994, addressed to the Commission's Washington D.C. office, in which Monarch had responded to the penalty proposal and the Order to Show Cause, respectively.

The judge's jurisdiction in this matter terminated when his decision was issued on July 20, 1994. Commission Procedural Rule 69(b), 29 C.F.R. 2700.69(b). 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 within 30 days of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R.

2700.70(a). We deem Monarch's letter to be a timely file 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 Monarch's position. In the interest of justice, we remand this matter 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 order and remand this matter for further proceedings.

Mary Lu Jordon, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner