CCASE:
SOL (MSHA) V. CONTRACTORS SAND
DDATE:
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

SECRETARY OF LABOR,	: Docket Nos.	WEST 93-62-M
MINE SAFETY AND HEALTH	:	WEST 93-406-M
ADMINISTRATION (MSHA)	:	WEST 93-407-M
	:	WEST 93-463-M
vs.	:	WEST 93-117-M
	:	WEST 93-141-M
CONTRACTORS SAND AND	:	WEST 93-408-M
GRAVEL SUPPLY, INC.	:	WEST 93-409-M
	:	WEST 93-426-M

O R D E R

These consolidated 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 July 21, 1994, Administrative Law
Judge August F. Cetti issued a Default Decision to Contractors
Sand And Gravel Supply, Inc. ("Contractors") for failing to show
cause, pursuant to an order issued on June 22, 1994, why default
should not be entered for its failure to comply with a prehearing
order. The judge ordered Contractors to pay civil penalties of
$15,149 to the Secretary of Labor ("Secretary").

The judge's jurisdiction in this matter terminated when his
decision was issued on July 21, 1994. Commission Procedural Rule
69(b), 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 within 30
days of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R.
 2700.70(a). On August 19, 1994, the Commission received
letter from Contractors stating that it requests review of the
default decision. In the letter, Contractors states that it
understood that the proceedings in question "were to be combined
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  The Default Decision mistakenly refers to "the Prehearing Order
issued on May 5, 1993." Slip op. at 1. That order was stayed by
the judge on June 4, 1993, and was superseded by a Second
Prehearing Order dated April 6, 1994. The judge issued the show
cause order because of Contractors' failure to comply with the
Second Prehearing Order. Order to Show Cause at 1.

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with . . . about 120 [other] alleged citations . . ." and that
the large number of citations issued to it suggested harrassment.

     We deem Contractors' letter 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 Contractors' position. Accordingly, we reopen this matter,
vacate the judge's default order, and remand this matter to the
judge, who shall determine whether default is warranted. See
Hickory Coal Co., 12 FMSHRC 1201, 1202 (June 1990).

                              Mary Lu Jordan, Chairman

                              Joyce A. Doyle, Commissioner

                              Arlene Holen, Commissioner