

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 8, 1996

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 95-114
Petitioner	:	A. C. No. 46-03408-03501 EHH
	:	
	:	Mine No. 1
	:	
v.	:	Docket No. WEVA 95-122
	:	A. C. No. 46-03141-03505 EHH
OPPORTUNITY TRUCKING,	:	
INCORPORATED,	:	Chesterfield Prep Plant
Respondent	:	

ORDER OF DEFAULT

Before: Judge Merlin

These cases are before me pursuant to Commission order dated September 11, 1995.

On September 1, 1995, the operator filed a motion to set aside default requesting relief from orders of default that were issued on August 2, 1995, in these cases. The operator stated that it thought it had filed answers with the Solicitor. The operator further asserted that it was not given ample opportunity to formally answer the charges or citations which led to the assessments. On September 11, 1995, the Commission remanded the case for a determination of whether relief from default was warranted.

On September 18, 1995, an order was issued directing that within 30 days the operator provide copies of the answers it alleged it sent to the Solicitor and explain why it failed to respond to the orders of show cause. The Solicitor was also ordered within 30 days to review his files to determine whether answers were received from the operator. The file contains the return receipts showing that the September 18 order was received by operator's counsel on September 21, 1995, and by the Solicitor on September 20, 1995.

No response was received from either party. On January 16, 1996, an order to show cause was issued directing the operator to provide the information requested in the September 18 order and stating that if it failed to comply it would be held in default. The Solicitor again was directed to review his files to determine whether answers were filed and advise the undersigned.

On January 23, 1996, the Solicitor filed its response to the January 17 order. The Solicitor advises that he did respond to the September 18 order, but that due to clerical error it was incorrectly mailed to the Office of Administrative Law Judges for the Department of Labor. The Solicitor has attached a copy of his response to the September 18 order in which the Solicitor states that he has reviewed his files and that he did not receive answers from the operator.

To date no response has been filed by the operator. Therefore, since the operator has failed to comply with the show cause order, it is in default.

In light of the foregoing, it is **ORDERED** that the operator be held in **DEFAULT** for the penalty amounts totaling \$1,056 and that it **PAY** this sum immediately

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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