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SOL (MSHA) V. GREEN HILL MINING  
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TTEXT:  
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
April 6, 1984  
SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v. Docket No. KENT 83-251

GREEN HILL MINING CO., INC.

#### DIRECTION FOR REVIEW AND ORDER

The document titled "Notice" filed by the respondent operator on March 7, 1984, is deemed to be a petition for discretionary review and is granted. 30 U.S.C. 823(d)(1976 & Supp. V 1981). The controversy arises under the Federal Mine Safety and Health Act of 1977. 30 U.S.C. 801 et seq. Following an inspection of the operator's mine, the Mine Safety and Health Administration (MSHA) of the Department of Labor issued four citations alleging violations of 30 C.F.R. sections 77.410, 77.1000, 77.1102 and 77.1109. Subsequently, MSHA issued a notification of the penalties it proposed for those citations, totalling \$134.00. Respondent contested and the matter came before this independent Commission for adjudication. Thereafter, the Secretary of Labor filed a proposal of penalty in the total amount of \$134.00 with the Commission.

The Rules of Procedure of this Commission require respondent to file an answer to the Secretary's proposal of penalty within 30 days. 29 C.F.R. § 2700.28. When no answer was received within 30 days, the Commission's Chief Administrative Law Judge issued an Order to Show Cause to respondent on September 28, 1983, explaining the requirement for an answer and allowing 30 additional days to file the answer or show good reason for failure to do so. The Chief Judge gave notice that failure to respond to the Order to Show Cause would result in a default judgment. Receiving no response to the Order to Show Cause, the Chief Judge entered an Order of Default on February 27, 1984, requiring respondent to pay the sum of \$134.00 immediately.

The operator seeks review of the default order and requests that it be amended to reflect a settlement. The operator represents that it paid to MSHA the penalty of \$134.00 on or about

August 10, 1983, since it did not care to pursue the matter further. In response to the operator's petition for discretionary review, the Secretary objects to the operator's request for relief, noting that the Secretary did not discuss or agree to settlement at any time. He notes that the respondent's "unsolicited check" was forwarded by the Regional Solicitor's office in Tennessee to MSHA for deposit pending resolution of the case in keeping with the policy of the Department of Labor. The respondent's submission includes a copy of the negotiated check.

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As noted above, this Commission is independent of the Department of Labor and MSHA. When he issued his Order to Show Cause, the Chief Judge of the Commission was not aware of the payment by the operator to MSHA of the full amount of the penalties. Because the operator did not respond to the Order to Show Cause, the Chief Judge was unaware also of that payment when he issued his Order of Default. Under these circumstances we find the Order of Default entered by the judge and his assessment of a total penalty of \$134.00 to be appropriate. We note, however, that the operator already has complied with the Chief Judge's order to pay the amount of \$134.00, which is the precise amount that the Department of Labor proposed for the cited violations.

Accordingly, the Order of Default issued by the Chief Judge on February 27, 1984, is affirmed.

A.E. Lawson, Commissioner

L. Clair Nelson, Commissioner

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