

CCASE:  
MSHA V. COLUMBIA PORTLAND CEMENT  
DDATE:  
19861113  
TTEXT:

FMSHRC-WDC  
November 13, 1986

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

Docket No. LAKE 86-38-M

COLUMBIA PORTLAND  
CEMENT COMPANY

BEFORE: Ford, Chairman; Backley, Doyle, and Lastowka,  
Commissioners

### ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. section 801 et. seq. (1982). On October 3, 1986, Chief Administrative Law Judge Paul Merlin issued an Order of Default finding respondent Columbia Portland Cement Company ("Columbia") in default, affirming the citation in issue, and assessing a civil penalty of \$2000. Thereafter, Columbia filed a timely petition for discretionary review with the Commission, requesting that the Order of Default and the penalty assessed against Columbia be reversed. On November 4, Columbia filed a supplementary Memorandum in Support of Petition for Discretionary Review specifically addressing its failure to respond to the July 7, 1986 Order to Show Cause which resulted in the October 3, 1986 Order of Default.

Default is a harsh remedy, and if a defaulting party can make a showing of adequate or good cause for a failure to respond to an order, the failure may be excused and proceedings on the merits permitted. M.M. Sundt Constr. Co., 8 FMSHRC 1269 (Sept. 1986). Columbia asserts that its failure to respond to the July 7, 1986 Order to Show Cause is attributable to the mistake or neglect of

a former employee. In the interests of justice we conclude that Columbia should have the opportunity to present its position to the judge.

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Accordingly, we vacate the Order of Dismissal and remand the case for further proceedings consistent with this Order. Fife Rock Products Co., 8 FMSHRC (October 1986).

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

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