

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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June 20, 2014

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

v.

GORDON SAND COMPANY
Respondent

CIVIL PENALTY PROCEEDING

Docket No. WEST 2014-47-M
A.C. No. 04-01787-332496

Gordon Sand Company

DEFAULT DECISION

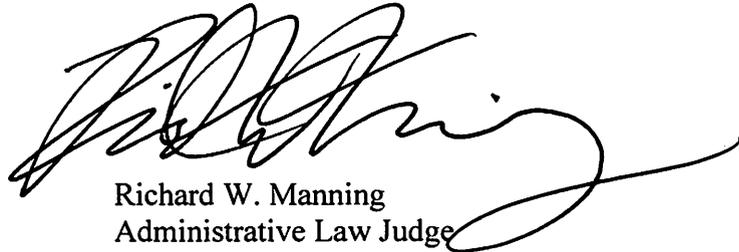
This case is before me upon a petition for assessment of civil penalty under Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.* (the "Act"). The case involves four citations issued under section 104(a) and a proposed civil penalty of \$400.00. A conference call was scheduled in this case on May 14, 2014, but Gordon Sand Company chose not to participate in the call. A conference call is equivalent to a court appearance and is especially important in a case designated for Simplified Proceedings. Gordon Sand Company also failed to file an answer or enter its appearance in this case, as required Commission Procedural Rule 102(c), which would have provided me with critical contact information. 29 C.F.R. § 2700.102(c).

On May 14, 2014, I issued an order to show cause against Gordon Sand Company. In the show cause order I directed Gordon Sand Company to explain why it should not be held in default for its failure to participate in the conference call and enter its appearance in the case. I warned Gordon Sand that its failure to file a satisfactory response to my order by June 11, 2014, would result in an entry of default against Gordon Sand and the assessment of the Secretary's proposed penalty of \$400.

Gordon Sand Company failed to respond to my order to show cause.¹ Consequently, Gordon Sand Company is in **DEFAULT**. 29 C.F.R. § 2700.66. The four citations at issue are **AFFIRMED** as written by the MSHA inspector. I have reviewed the citations and the six penalty criteria in Section 110(i) of the Act. Based on this review I find that the penalties

¹ The order to show cause was sent to Gordon Sand Company via certified mail. The return receipt card was returned to the Commission with the signature of one of its agents dated May 19, 2014. I also note that in another case, Gordon Sand Company failed to appear at a scheduled hearing and I held the company in default. *Gordon Sand Company*, 30 FMSHRC 235 (March 2008).

proposed by the Secretary are reasonable and are hereby **AFFIRMED**. Gordon Sand Company is **ORDERED TO PAY** the Secretary of Labor the sum of \$400.00 within 30 days of the date of this decision.²



Richard W. Manning
Administrative Law Judge

Distribution:

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991 Nut Tree Road, 2nd Floor, Vacaville, CA 95687 (First Class Mail)

George E. Gordon III, Gordon Sand Company, 28310 Industrial Blvd, Suite F, Hayward, CA
94545-4436 (Certified Mail)

RWM

² Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.