CCASE:
SOL (MSHA) V. SOLAR FUEL COMPANY
DDATE:
19831005
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	CIVIL PENALTY PROCEEDING Docket No. PENN 83-118 A.C. No. 36-06100-03506
v.	Solar No. 9 Mine
SOLAR FUEL COMPANY, RESPONDENT	

ORDER OF DISMISSAL

Before: Judge Merlin

In this case, the notice of contest card was signed by the operator and mailed to MSHA on March 14, 1983. On July 25, 1983, the Secretary of Labor mailed a motion for leave to file late petition and a petition for assessment of civil penalty. On August 4, 1983, the operator mailed a motion for dismissal on the basis of untimely filing of the petition.

A civil penalty petition should be filed within 45 days of receipt of a timely notice of contest of a penalty. 29 C.F.R. 2700.27(a). The Commission has held that the late filing of a petition will be accepted where the Secretary demonstrates adequate cause and where there is no showing of prejudice to the operator. Salt Lake County Road Department, 3 FMSHRC 1714 (July 28, 1981) In his motion for leave to file late petition, the Secretary states: "The assessments information and all administrative records pertaining to the case were forwarded to the Solicitor's Office by Assessments. However, the file was misplaced inadvertently and the civil penalty petition was not filed in a timely manner."

The Secretary took over four months to file a petition which should have been filed within 45 days. The only proferred excuse in this case is that the file was misplaced. This bare assertion does not constitute adequate cause. The question of whether the operator was prejudiced by the delay does not arise here because there is no showing of adequate cause. A dismissal here is unfortunate for the enforcement of the Act but I see no alternative. Hopefully, the Solicitor will exercise greater care in the future.

~1748

Accordingly, the operator's motion is Granted and this case is DISMISSED.

Paul Merlin
Chief Administrative Law Judge