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SOL (MSHA) V. LAWRENCE CONCRETE  
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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. YORK 82-14-M  
A.C. No. 19-00283-05007

v.

LAWRENCE READY MIX CONCRETE  
CORPORATION,  
RESPONDENT

Assonet Sand & Gravel Co.

ORDER OF DISMISSAL

Before: Judge Merlin

In this case, the notice of contest card was signed by the operator and mailed to MSHA on November 13, 1981. On July 26, 1983, the Secretary of Labor was ordered to show cause why the case should not be dismissed for failure to file a proposal for a penalty. On August 22, 1983, the Secretary of Labor filed a response to the order to show cause and a petition for assessment of civil penalty.

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. An extraordinarily high caseload and lack of clerical personnel were held "good cause" for filing two months late. Salt Lake County Road Department, 3 FMSHRC 1714 (July 28, 1981).

In Medicine Bow Coal Company, 5 FMSHRC 882 (1982), the Commission held inadequate clerical help constituted good cause for a two week delay, but pointed out that the late filings had been before its warnings in Salt Lake. In this case the Solicitor's motion for leave to file late petition sets forth:

\* \* \* Petitioner did prepare a timely Proposal on December 16, 1981. However, for reasons which were caused by the staff attorney's failure to act and because of insertion of enclosed documents in

~247

the wrong file, we submit that the failure to file should be construed as excusable neglect. Petitioner did not simply forget to prepare a Proposal. One was prepared, but inadvertently not filed.

The Secretary took over a year and a half to file a petition which should have been filed within 45 days. The only excuse in this case is that the Solicitor put the documents in the wrong file. This is not good cause for such an extraordinarily long delay. Indeed, the petition was filed only in response to my show cause order. The operator should not have to answer such a stale claim.

In light of the foregoing, this case is DISMISSED.

Paul Merlin  
Chief Administrative Law Judge