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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

v.

ST. JOE RESOURCES COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. YORK 85-8-M  
A.C. No. 30-01185-05514

Balmat Mine No. 4 & Mill

DECISION

Before: Judge Melick

This case involves a civil penalty proceeding under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act." The issue is whether a proposal for penalty should be dismissed because of its late filing under Commission Rule 27.(FOOTNOTE.1)

On November 13, 1984, St. Joe Resources Company (St. Joe) was cited for a violation of the regulatory standard at 30 C.F.R.

57.14013. The Secretary proposed a penalty of \$20 and St. Jo filed a timely notice of contest on June 21, 1985. On October 10, 1985, the Commission's Chief Judge ordered the Secretary "to show cause within 30 days of the date of [the] Order, [why] the case should not be dismissed" for not filing a proposal for penalty within 45 days of the date the Secretary received a timely notice of contest. Commission Rule 27, supra. Subsequently, on October 18, 1985, the proposal for penalty was filed by the Secretary accompanied by a letter addressed to the Chief Judge stating as follows:

Enclosed is a copy of the proposal for a penalty that was mailed to the Review Commission and the respondent on September 24, 1985. We have been

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contacted by Mr. Heller, an attorney representing the respondent, who has already received their copy of the penalty proposal. We trust this satisfies the October 10, 1985 order to show cause as to why this case should not be dismissed.

Even assuming, arguendo, that the Secretary filed his proposal on September 24, 1985, as he alleges, that filing was at least 49 days late.

In Secretary of Labor v. Salt Lake County Road Department, 3 FMSHRC 1714 (1981), the Commission held that although its Rule 27 was not a statute of limitations, if the Secretary seeks permission to file an untimely proposal for penalty he must predicate his request upon adequate cause. In this case the Secretary has failed to state any grounds for his untimely filing. Accordingly the Respondent's request to dismiss these proceedings is granted.

ORDER

These civil penalty proceedings and the citation therein (Citation No. 2367889) are hereby dismissed.

Gary Melick  
Administrative Law Judge

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FOOTNOTES START HERE:-

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1 Commission Rule 27, 29 C.F.R. 2700.27 provides in pertinent part: (a) When to file. Within 45 days of receipt of a timely notice of contest of a notification of proposed assessment of penalty, the Secretary shall file a proposal for a penalty with the Commission.