

CCASE:

MSHA V. M. JAMIESON

DDATE:

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TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
March 2, 1990

SECRETARY OF LABOR,                                   CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),                           Docket No. WEST 90-41-M  
Petitioner   A. C. No. 04-01924-05517

v.   Pleasanton Pit & Mill

M. JAMIESON COMPANY,  
Respondent

ORDER ACCEPTING LATE FILING  
ORDER OF ASSIGNMENT

On January 24, 1990, an order to show cause was issued to the Solicitor directing him to file his penalty petition. On February 9, 1990, the solicitor filed the proposal for Penalty and responded to the show cause order.

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 adequate cause for filing two months late. Salt Lake County Road Department, 3 FMSHRC 1714 (July 1981); See also, Medicine Bow Coal Company, 4 FMSHRC 882 (May 1982). However, adequate cause has not been found where there was a showing of prejudice, Price River Coal Co., 4 FMSHRC 489 (March 1982), and where the proposal was over a year and a half late, Lawrence Ready Mix Concrete, 6 FMSHRC 246 (Feb. 1984).

In this case, the Solicitor's motion states that the filing was late because:

The file in the captioned case, 90-41-M, was erroneously placed in with another pending matter against Respondent (WEST 89-464). Counsel for petitioner was unaware of the existence of 90-41-M and, therefore, did not file a proposal for penalty.

A relatively short period of time is involved and the response to the show cause was prompt. Further, there is no showing of prejudice by the operator nor does the operator allege this in its answer.

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In light of the foregoing, the Solicitor's proposal for penalty is ACCEPTED.

This case is hereby assigned to Administrative Law Judge John J. Morris.

All future communications regarding this case should be addressed to Judge Morris at the following address:

Federal Mine Safety and Health  
Review Commission  
Office of Administrative Law Judges  
Colonnade Center  
Room 280, 1244 Speer Boulevard  
Denver, CO 80204  
Telephone No. 303-844-39@2

Paul Merlin  
Chief Administrative Law Judge

Distribution:

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