

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

JUN 23 1992

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 91-640-M
Petitioner	:	A. C. No. 45-03180-05506
	:	
v.	:	Black River Site
STONEWAY CONCRETE,	:	
Respondent	:	

ORDER OF DISMISSAL

Before: Judge Merlin

On March 6, 1992, an order to show cause was issued directing the operator to file an answer to the penalty proposal. On March 20, 1992, the operator filed a letter stating that a settlement had been reached in this case on November 15, 1991. The operator also enclosed a copy of a letter dated November 15, 1991, addressed to the Seattle Solicitor confirming the settlement agreement and a copy of a check for \$131.50 the settlement amount. On April 13, 1992, an order was issued accepting the operator's March 20 letter as a response to the March 6 show cause order and directing the Solicitor to file the settlement motion or show cause why the case should not be dismissed. The file contains the return receipt showing that the Solicitor received a copy of the April 13 order on April 15, 1992. The Solicitor has failed to respond to the April 13 order.

This Solicitor routinely fails to respond to show cause orders, orders to submit information and other orders issued by the Chief Administrative Law Judge. In virtually all his cases, it has been necessary to repeatedly remind him of orders which require him to take action. As I have stated on prior occasions, the Office of the Chief Administrative Law Judge is simply too busy to keep calling and writing this Seattle Solicitor. In any event, these reminders are of no effect. The Solicitor's failure to respond here is at one with his constant and continual disregard of duly issued orders. In this the Seattle Solicitor stands alone because all other Solicitors comply with Commission orders. His persistent dereliction of duty, of which this case is but one example, cannot be countenanced.

Only the Commission can approve a settlement of a penalty that has been contested under section 105(a) of the Mine Act. 30 § 820(k). In light of the Solicitor's failure to respond to the show cause order dated April 13, 1992, this penalty petition must be dismissed.

Accordingly, it is ORDERED that the this case be DISMISSED.

A handwritten signature in black ink, appearing to read "Paul Merlin". The signature is fluid and cursive, with a large initial "P" and "M".

Paul Merlin
Chief Administrative Law Judge

Distribution:

Ernest Scott, Esq., Office of the Solicitor, U. S. Department of Labor, 1111 Third Avenue, Suite 945, Seattle, WA 98101 (Certified Mail)

Mr. Ike Brown, Stoneway Concrete, 9125 10th Avenue South, Seattle, WA 98108 (Certified Mail)

Douglas White, Esq., Counsel Trial Litigation, Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 (Hand Delivered)

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