

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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March 13, 2002

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2002-39
Petitioner	:	A. C. No. 29-00845-03610
v.	:	
	:	
PITTSBURG & MIDWAY COAL MNG	:	
CO YORK CANYON CMLPX,	:	
Respondent.	:	Mine: York Canyon Surface Mine

**ORDER DENYING MOTION TO RECONSIDER**

On February 7, 2002, I issued an order accepting the Petitioner's late filed Petition for Assessment of Penalty. I ruled that the Secretary had shown adequate cause for the 11 day delay in filing the petition, and that the delay was not prejudicial to the Respondent. Subsequently, I assigned the case to Commission Administrative Law Judge Gary Melick. Three days after assignment, the Respondent moved for reconsideration of the Order Accepting Late Filing. Judge Melick has returned the case to me so that I may rule on the motion.

As I stated in the order accepting the petition, the Commission has made clear that the Secretary may be given permission to late file if there is adequate case for the delay and if there is no prejudice to the operator. (*Salt Lake County Road Dept.*, 3 FMSHRC 1714, 1715 (July 1981)). The Respondent argues that the Secretary's assertion of "inadvertent error" as cause for the delay is not adequate. I disagree.

The Secretary's counsels handle a large volume of cases requiring penalty petitions and almost all such cases are timely filed. Late filed petitions are very rare. There is no hint the Secretary is habitually slothful when it comes to filings. None the less, human nature being what it is, inadvertent mistakes inevitably will be made and late filings will occur. When, as here, the delay is short, when the delay does not prejudice the opposing party, and when a singular "inadvertent error" causes delay, a more complete explanation for the delay occurred is not, in my judgement, necessary and the late filed petition may be accepted. The result --acceptance of the petition-- is consistent with the Commission's historic reluctance to debar parties on purely procedural grounds.

**ACCORDINGLY**, the Motion to Reconsider is **DENIED** and the case is returned to Judge Melick for further proceedings.

David F. Barbour  
Chief Administration Law Judge

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