

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

May 31, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 95-357
Petitioner : A. C. No. 15-16936-03502 E24
 :
v. : Langley Branch
AUSTIN POWDER COMPANY, :
Respondent :

ORDER ACCEPTING APPEARANCE
ORDER ACCEPTING LATE FILING
ORDER DIRECTING OPERATOR TO ANSWER

It is ORDERED that the Conference and Litigation Representative (CLR) be accepted to represent the Secretary in accordance with the notice of limited appearance he has filed with the penalty petition. Cyprus Emerald Resources Corporation, 16 FMSHRC 2359 (November 1994).

On April 24, 1994, the CLR filed a motion to accept late filing of the penalty petition along with an affidavit. As I have previously recognized, the CLR program is a new approach by the Secretary to have non-lawyer MSHA employees appear before the Commission in less complicated cases. I have approved the practice. Cyprus Emerald Resources Corporation, *supra*. As set forth in an affidavit of the CLR, there was some confusion over the computation of the 45 day period allowed for filing the penalty petition and therefore, the penalty petition was filed 51 days late. I take judicial notice of the fact that as a general matter pleadings and motions filed by CLR's with the Commission are most prompt.

The operator has not filed an objection to the CLR's motion. 29 C.F.R. ' 2700.10. There is no allegation of prejudice

The Commission has not viewed the 45 day requirement as jurisdictional or as a statute of limitation. Rather, the Commission has permitted late filing of the penalty petitions upon a showing of adequate cause by the Secretary where there has been no showing of prejudice by the operator. Salt Lake County Road Department, 3 FMSHRC 1714, 1716 (July 1981); Rhone-Poulenc of Wyoming Co., 15 FMSHRC 2089 (Oct. 1989). I find the circum-

stances as stated above constitute adequate cause for the short delay in the filing of the penalty petition.

In light of the foregoing, it is ORDERED that the CLR's motion to accept late filing of the penalty petition be GRANTED.

It is further ORDERED that the operator file an answer to the penalty petition within 30 days of the date of this order.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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