

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**  
**1730 K STREET, N.W., 6<sup>TH</sup> FLOOR**  
**WASHINGTON, D. C. 20006-3868**

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. VA 99-128
Petitioner	:	A. C. No. 06872-03509 A
	:	
v.	:	Kennedy #2
DONALD J. RIFFE, EMPLOYED	:	
BY KNOX CREEK COAL	:	
CORPORATION,	:	
Respondent	:	

**ORDER OF DISMISSAL**

**Before: Judge Merlin**

This case is a petition for the assessment of a civil penalty filed by the Secretary of Labor under section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(a).

The Solicitor has filed a motion for leave to file her petition out of time and the operator has filed a response in opposition.

On July 21, 1999, the Secretary issued a notice of proposed civil penalty assessment. The respondent timely contested this assessment by filing a request for hearing within 30 days. The request was received on August 10, 1999. 29 C.F.R. § 2700.26. The Secretary had 45 days after receipt of the contest to file the penalty petition. 29 C.F.R. § 2700.28. Therefore, the petition was due on September 24, 1999, but the Solicitor did not file until October 20, 1999. 29 C.F.R. § 2700.5(d). It was, therefore, 26 days late.

The Commission has permitted late filing of penalty petitions where the Secretary demonstrates adequate cause for the delay and where the respondent fails to show prejudice from the delay. Salt Lake County Road Department, 3 FMSHRC 1714, 1716 (July 1981). The Secretary must establish adequate cause for the delay in filing, apart from any consideration of whether the operator was prejudiced by the delay. Rhone-Poulenc of Wyoming Co., 15 FMSHRC 2089 (Oct. 1989). A determination of adequate cause is based upon the reasons offered and the extent of the delay.

In this case the sole basis for the Solicitor's request to permit late filing is her own misunderstanding of procedures followed in her office. She states that she was unaware that she

was required to draft a new petition in a 110 (c) case, because in 110(a) cases a petition is automatically generated upon assignment. This Solicitor has handled many mine safety cases. I find that her professed lack of understanding of such basic and simple procedures does not constitute adequate cause. This type of excuse could be made in virtually any case where the Solicitor is late.

In light of the foregoing, it is **ORDERED** that this case is **DISMISSED**.

Paul Merlin  
Chief Administrative Law Judge

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