

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

July 15, 1999

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 99-263-M
Petitioner	:	A. C. No. 45-03086-05511
	:	
v.	:	
GOOD CONSTRUCTION,	:	Good Portable Crusher
Respondent	:	

ORDER TO REOPEN
ORDER TO SUBMIT PENALTY PETITION

This case is before me pursuant to order of the Commission dated June 21, 1999.

The instant matter involves one alleged violation. In a letter received on May 4, 1999, the operator seeks to reopen this case on the ground that it did not receive notice of the proposed penalty assessment.

On October 21, 1997, MSHA issued five citations to the operator. MSHA proposed penalties for four of the violations, which the operator timely contested and which are contained in Docket Nos. WEST 98-139-M and WEST 98-178-M. These dockets were assigned to Administrative Law Judge Richard Manning, who held a hearing on January 6, 1999, and issued a decision on February 17, 1999.

On December 7, 1998, MSHA proposed a penalty for the violation in this case and mailed the proposal by certified mail to the operator on that date. The proposed assessment was returned to MSHA with the envelope marked "unclaimed". The operator has provided a copy of the envelope which shows that the operator was notified of the certified mail on December 16 and 21, 1998, and that on December 26, 1998, the notification was returned marked unclaimed. The operator states that it was not until February 24, 1999, that it realized a penalty had been assessed when it received a demand letter from MSHA. The address on the demand letter and returned envelope are the same.

On June 29, 1999, I issued an order directing the operator to explain why it failed to accept the certified mail notifications from the post office. In that order I held that service in this case by certified mail with at least two attempted deliveries was adequate.

On July 12, 1999, the operator filed its response to the June 29 order. The operator states that its office is located in a rural area 8 miles from the nearest post office. The operator states that it received the first notice but due to a heavy snow storm was unable to reach the post office

for several days. By the time the operator was able to get to the post office the assessment package had been returned.

I accept the operator's representations and find that the operator has satisfied the requirements of Rule 60(b)(1). I further note that as stated in the Commission's June 21 order, the Secretary does not object to operator's motion for relief. Therefore, this case should be reopened.

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

It is further **ORDERED** that the Solicitor file a penalty petition within 45 days of the date of this order.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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