

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE
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June 15, 2010

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 2009-1440
Petitioner,	:	A.C. No. 46-04236-184740
	:	
v.	:	
	:	
MAPLE COAL COMPANY,	:	Maple Eagle No. 1 Mine
Respondent	:	

ORDER ACCEPTING LATE FILING
ORDER DENYING MOTION TO DISMISS

The Secretary of Labor, Mine Safety and Health Administration (“Secretary”) filed her penalty petition on November 17, 2009.¹ On December 14, 2009, Respondent Maple Coal Company (“Maple Coal”) filed its motion to dismiss for the Secretary’s failure to timely file the penalty petition, accompanied by its answer. Maple Coal alleges that it was prejudiced by the delay.

On January 29, 2010, the Secretary filed an Opposition to Respondent’s Motion to Dismiss and Request for Acceptance of Petition Out-of-Time, in which it is alleged that the high rate of contests, coupled with limited staff, accounted for the delay.

On February 6, 2010, Maple Coal filed a Reply to the Secretary’s Opposition, in which it further outlined its passionate arguments in favor of dismissal.

Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d) (“Mine Act”), states that a mine operator wishing to contest a citation or an order or a notification of proposed assessment of penalty must notify the Secretary of Labor (“Secretary”) of its desire to do so within 30 days of receipt of the citation or order or proposed assessment, at which time the Secretary immediately shall notify the Commission, and the Commission shall afford an opportunity for hearing. Commission Rule 28(a) provides that “within 45 days of receipt of a timely contest of a proposed penalty assessment, the Secretary shall file with the Commission a petition for assessment of penalty.” 29 C.F.R. § 2700.28(a).

¹In future proceedings, the Secretary should also file a Motion to File the Petition Out of Time in accordance with 29 C.F.R. § 2700.9.

Maple Coal filed its notice of contest in the above-captioned docket on May 13, 2009. Accordingly, under Section 2700.28(a), the Secretary's petition for assessment of civil penalty should have been filed by June 29, 2009.

While I take cognizance of the Maple Coal's passionate arguments, case law demonstrates the Commission's preference toward resolving cases on the merits rather than based on procedural defects. *See M.M. Sundt Constr. Co.*, 8 FMSHRC 1269, 1271 (Sept. 1986) and *Coal Prep. Services, Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995). It is well-settled that the late filing of a civil penalty petition is not jurisdictional. *See Salt Lake County Road Dept.*, 3 FMSHRC 1714, 1716 (July 1981). While the Secretary should adhere to the 45-day time limit, the Commission has made clear that neither the term "immediately" contained in Section 105(d) of the Mine Act nor the time limit should be construed as a "procedural strait jacket[.]" *Id.* at 1716.

Furthermore, given the unprecedented number of cases currently before the Commission, as well as the unprecedented number of penalty petitions pending before the Secretary, strict adherence to the 45-day time line is unrealistic. *See Solar Energy*, 31 FMSHRC 729, 730 (June 2009) (ALJ Feldman).

In light of all of the foregoing, it is **ORDERED** that the Secretary's late-filed penalty petition is **ACCEPTED**. Accordingly, Maple Coal's motion to dismiss is **DENIED**.

Robert J. Lesnick
Chief Administrative Law Judge

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