



UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
 One Lafayette Centre  
 1120 20th Street, N.W. — 9th Floor  
 Washington, DC 20036-3419

FAX:  
 COM (202) 606-5050  
 FTS (202) 606-5050

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SECRETARY OF LABOR,  
 Complainant,  
 v.  
 NORTH BERGEN ANIMAL HOSPITAL,  
 Respondent.

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Docket No. 92-1204

**ORDER**

On May 17, 1993, North Bergen Animal Hospital (North Bergen) filed a notice of withdrawal in the above-captioned case. The Commission acknowledges receipt of North Bergen's notice of withdrawal. There being no matters remaining before the Commission for adjudication, the administrative law judge's decision affirming the citations and proposed penalties is the final order of the Commission.

*Edwin G. Foulke, Jr.*  
 Edwin G. Foulke, Jr.  
 Chairman

*Velma Montoya*  
 Velma Montoya  
 Commissioner

Dated May 25, 1993

NOTICE OF ORDER

The attached Order by the Occupational Safety and Health Review Commission was issued and served on the following on May 25, 1993.

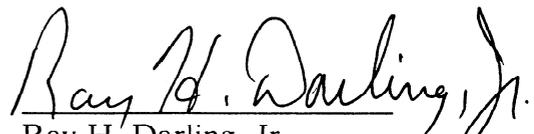
Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, USDOL  
200 Constitution Ave., N.W. Room S4004  
Washington, D.C. 20210

Patricia Rodenhausen, Esq.  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
201 Varick St., Room 707  
New York, NY 10014

Dr. Gerald M. Buchoff, Director  
North Bergen Animal Hospital  
9018 Kennedy Boulevard  
North Bergen, NJ 07047

Irving Sommer  
Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
One Lafayette Centre  
1120 20th Street, N. W. - 9th  
Washington, D. C. 20036-3419

FOR THE COMMISSION

  
Ray H. Darling, Jr.  
Executive Secretary



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION  
1825 K STREET N.W.  
4TH FLOOR  
WASHINGTON D.C. 20006-1246

FAX:  
COM (202) 634-4008  
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SECRETARY OF LABOR  
Complainant,  
v.  
NORTH BERGEN ANIMAL HOSPITAL  
Respondent.

OSHRC DOCKET  
NO. 92-1204

**NOTICE OF DOCKETING  
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on July 1, 1992. The decision of the Judge will become a final order of the Commission on July 31, 1992 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before July 21, 1992 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary  
Occupational Safety and Health  
Review Commission  
1825 K St. N.W., Room 401  
Washington, D.C. 20006-1246

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 634-7950.

FOR THE COMMISSION

Ray H. Darling, Jr.  
Executive Secretary

Date: July 1, 1992

DOCKET NO. 92-1204

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Ave., N.W.  
Washington, D.C. 20210

Patricia Rodenhausen, Esq.  
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New York, NY 10014

Dr. Gerald M. Buchoff  
North Bergen Animal Hospital  
9018 Kennedy Boulevard  
North Bergen, NJ 07047

Irving Sommer  
Chief Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
Room 417/A  
1825 K Street, N.W.  
Washington, DC 20006 1246

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**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
 1825 K STREET N.W.  
 4TH FLOOR  
 WASHINGTON DC 20006-1246

FAX:  
 COM (202) 634-4008  
 FTS 634-4008

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SECRETARY OF LABOR,

Complainant,

v.

NORTH BERGEN ANIMAL  
 HOSPITAL, and its successors,

Respondent.

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Docket No. 92-1204

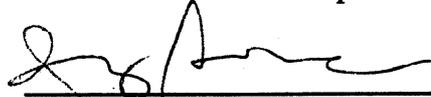
ORDER

By motion dated May 12, 1992, the Secretary moves to dismiss the Respondent's Notice of Contest as not being timely filed under Section 10 of the Act. The Respondent filed a letter in opposition.

The record demonstrates that two citations and notification of proposed penalties were issued to the Respondent on March 6, 1992, and received on March 7, 1992. Under Section 10(a) of the Act, 29 U.S.C. 659(a), an employer must notify the Secretary that it intends to contest the citations or proposed penalties within fifteen (15) working days of its receipt. The Respondent had until March 30, 1992 to file its Notice of Contest, but did not do so, filing a letter dated April 10, 1992 stating, " I know that it is late, but I just became aware of the same this afternoon. They were apparently received by my Saturday receptionist and placed in a pile with solicitation mail in my office. " In a later letter explaining the situation Respondent states, "She placed it in a pile with junk (solicitation) mail on the shelf next to my desk. It was not in its envelope as my receptionists are accustomed to opening the mail before bringing it to my desk. We are a small office and I tend to leave my junk mail pile for several weeks at a time. "

There is no evidence that the delay in filing was caused by “the Secretary’s deception or failure to follow proper procedures.” *Atlantic Marine, Inc. v. OSAHRC and Dunlop*, 524 F2d 476 (5th Cir 1975). The Respondent’s failure to file its Notice of Contest in a timely fashion was due to its own carelessness and negligence. The Commission has held that employers whose improper business procedures has led to failure to file on a timely basis are not entitled to relief. See *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020, 1987-1990 CCH OSHD ¶ 28,409 (No. 86-1266, 1989); *Stroudsbouurg Dyeing & Finishing Co.*, 13 BNA OSHC 2058, 1987-1990 CCH OSHD ¶ 28433 (No. 88-1830, 1989). The office procedure of Respondent, a going business should provide daily scrutiny of all incoming mail. The reason advanced by the Respondent for its failure to file in a timely manner do not constitute “excusable neglect” within Federal Rules of Civil Procedure 60(b).

Accordingly, the Secretary’s motion to dismiss the Notice of Contest is granted. The Secretary’s citations and proposed penalties are **AFFIRMED** in all respects.

  
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IRVING SOMMER  
Judge

DATED: JUL 1 1992  
Washington, D.C.