

CCASE:
ENERGY COAL V. SOL (MSHA)
DDATE:
19821108
TTEXT:

~1964

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

ENERGY COAL CORPORATION,
CONTESTANT

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

Notices of Contest

Docket No. WEVA 82-371-R
Citation No. 1071316 5/19/82

Docket No. WEVA 82-372-R
Citation No. 1071318 5/20/82

Docket No. WEVA 82-373-R
Citation No. 1071319 5/24/82

Docket No. WEVA 82-374-R
Citation No. 1071321 5/24/82

Docket No. WEVA 82-375-R
Citation No. 1071329 5/27/82

No. 14 Mine

ORDER OF DISMISSAL

On August 20, 1982, Energy Coal Corporation filed a "Notice of Appeal And/Or Request For A Hearing" with respect to the above-captioned citations. The Notice of Appeal which has been given the designated docket numbers indicated that the operator had had a conference with the MSHA District Manager and that no penalty proposals had then been issued. The Notice stated that it was being filed to preserve the record and in order to notify MSHA of the intention to contest the proposed violations and/or the proposed penalties.

On September 20, 1982, the Solicitor filed a motion to dismiss the notices of contest for untimely filing. The Secretary's motion explained that the citations were received by the operator from May 19, 1982 to May 27, 1982. The Solicitor cited section 105(d) of the Act which provides that a notice of contest to a citation be filed within 30 days of its receipt. Based thereon the Solicitor argued that since the notices of contest were not contested until

