

CCASE:  
WESTMORELAND COAL V. SOL (MSHA)  
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TTEXT:

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

WESTMORELAND COAL COMPANY,  
CONTESTANT

NOTICE OF CONTEST

Docket No. WEVA 83-140-R

v.

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

Order No. 2140708  
2/18/83

Hampton No. 3 Mine

ORDER OF DISMISSAL

On April 4, 1983, Westmoreland Coal Company filed a Notice of Contest of the above-captioned order. On April 13, 1983, the Solicitor filed a motion to dismiss the notice of contest for untimely filing.

The Solicitor's motion explained that the order was received by the operator on February 18, 1983. The Solicitor cited section 105(d) of the Act which provides that a notice of contest to an order be filed within 30 days of its receipt. Based thereon the Solicitor argued that since the order was not contested until March 31, 1983 (FOOTNOTE 1), it was not filed within the requisite 30-day period.

The Solicitor's motion to dismiss must be granted. Section 105(d) of the Act is clear in directing that an operator contest issuance of an order within 30 days from the order's receipt. 29 C.F.R. 2700.20. Island Creek Coal Company, 1 FMSHRC 989 (August 3, 1979) affirming PIKE 79-18 (January 30, 1979) reported at 1 MSHC 2143-2144. In this case, the operator waited 41 days before mailing the notice of contest.

In light of the foregoing, this case is DISMISSED.

Paul Merlin  
Chief Administrative Law Judge

FOOTNOTE START HERE-

1 The notice of contest was mailed to the Commission and the Solicitor by certified mail on March 31, 1983 and received by the Commission on April 4, 1983.