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INDUSTRIAL RESOURCES V. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

INDUSTRIAL RESOURCES, INC.,  
CONTESTANT

CONTEST PROCEEDING

v.

Docket No. VA 85-10-R  
Citation No. 2455472; 12/6/84

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

Buchanan No. 1 Mine

ORDER OF DISMISSAL

Before: Judge Steffey

Counsel for contestant filed on February 5, 1985, a notice of contest seeking review of Citation No. 2455472 dated December 6, 1984. Section 105(d) of the Federal Mine Safety and Health Act of 1977 requires that an operator notify the Secretary of Labor within 30 days of receipt of a citation that he intends to contest the citation. The certificate of service shows that contestant did not serve a copy of the notice of contest on the Secretary until February 1, 1985, which was 56 days after contestant received the citation.

Section 2700.20 of the Commission's rules, 29 C.F.R. 2700.20, provides for a contestant to file a notice of contest with the Commission "at or following the timely filing of his notice of contest with the Secretary." The Commission's rules, therefore, recognize the need for a contestant to notify the Secretary that a citation is being contested within 30 days after its receipt by contestant.

The notice of contest states that an informal conference with respect to Citation No. 2455472 was held in Richlands, Virginia, on January 14, 1985, which resulted "in said citation remaining in full force and effect." Contestant has not submitted any modification of the citation occurring after December 6, 1984, which might justify a notification to the Secretary of an intent to contest the citation within 30 days after a modification of the citation. An informal conference is not the equivalent of a modification or change in a citation which expands the 30-day notification period required by section 105(d).

Soon after the 1977 Act was passed, I issued on January 30, 1979, in Island Creek Coal Company, Docket No. PIKE 79-18, an order of dismissal in which I interpreted section 105(d) as

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requiring an operator to file a notice of contest with the Commission within 30 days of issuance. I dismissed the application for review in that case because it was filed with the Commission 3 days after the 30-day period had expired. The Commission affirmed my decision in Island Creek Coal Co., 1 FMSHRC 989 (1979).

The notice of contest in this proceeding was not served on the Secretary until 26 days after the 30-day notification period had expired. Therefore, the notice of contest must be dismissed as having been untimely filed.

Contestant may, of course, contest the validity of the citation when the Secretary files a proposal for assessment of civil penalty with respect to the violation alleged in the citation. Energy Fuels Corp., 1 FMSHRC 299 (1979).

WHEREFORE, it is ordered:

The notice of contest filed on February 5, 1985, in Docket No. VA 85-10-R, is dismissed for failure of contestant to comply with the 30-day notification period provided for in section 105(d) of the Federal Mine Safety and Health Act of 1977.

Richard C. Steffey  
Administrative Law Judge