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

BECKLEY COAL MINING
COMPANY,

 CONTESTANT

v.

CONTEST PROCEEDING

Docket No. WEVA 87-204-R
Safeguard No. 2575910; 4/24/87

Beckley Mine

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

DECISION

Before: Judge Melick

On April 24, 1987, a notice to provide safeguard was issued by the Secretary under section 314(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et. seq., the "Act," to the Beckley Coal Mining Company (Beckley). On May 26, 1987, Beckley attempted to contest that safeguard notice "pursuant to Section 2700.20 of the Rules of Procedure".

Thereafter, on June 4, 1987, the Secretary filed his Answer and a Motion to Dismiss stating therein that neither section 105(d) of the Act nor Commission Rule 20 provide for the contest or review before this Commission of notices of safeguards. The Secretary noted that Section 101(c) of the Act provides a mechanism for the operator to challenge or contest mandatory safety standards (or a notice of safeguard enforced as a mandatory safety standard) and that such proceedings are not within the Commission's jurisdiction. Beckley did not respond to the Secretary's Motion to Dismiss.

Commission Rule 20(a) cited by Beckley as authority for its attempt to contest the notice of safeguard at issue, tracks the language of section 105(d) of the Act. Under that section a mine operator may contest an order issued under section 104, a citation or a penalty assessment issued under section 105(a) or section 105(b), or the reasonableness of the length of abatement time fixed in a citation. The safeguard notice here challenged is not within any of these categories.

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Accordingly the Secretary's Motion to Dismiss filed in these proceedings is granted and the attempted contest of Safeguard No. 2575910 is dismissed. If the Secretary should subsequently issue a citation or order for a failure to comply with the safeguard notice the mine operator may then wish to file a contest under section 105(d) of the Act.

Gary Melick
Administrative Law Judge
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