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RIVCO DREDGING V. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

RIVCO DREDGING CORPORATION,  
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. KENT 88-23-R  
Citation No. 2985271; 9/17/87

Docket No. KENT 88-24-R  
Citation No. 2985272; 9/17/87

River Dredge Mine  
Mine ID 15Å12672

ORDER OF DISMISSAL

Before: Judge Maurer

It is undisputed that the two citations at bar (Nos. 2985271 and 2985272) were issued on September 17, 1987, and that Contestant did not notify Respondent or the Commission of its intent to contest the citations until the MSHA office in Pikeville, Kentucky received a notice of contest on October 21, 1987. The Commission was not forwarded notification until November 16, 1987, when it received the correspondence via the Department of Labor.

Under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the operator must notify the Secretary of its intent to contest a citation within 30 days of its receipt. Here, the Secretary was notified only after the 30 days had elapsed. The contests were accordingly filed untimely and are therefore DISMISSED. Alexander Bros., Inc., 1 MSHC 1760 (1979); Island Creek Coal Co., 1 MSHC 2143 (1979).

Because this dismissal is on jurisdictional grounds, and this Commission is without subject-matter jurisdiction over the citations at bar in these contest proceedings, I find Rivco's failure to contest the associated proposed civil penalty assessments because Mr. Wilson did not recognize or understand the need to also file such a contest to be a moot point herein, having no bearing on these two contest proceedings.

