

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 18, 2002

KINDER MORGAN OPERATING	:	CONTEST PROCEEDINGS
L.P. "C",	:	
	:	
Contestant	:	Docket No. KENT 2003-85-R
v.	:	Citation No. 7648459; 5/21/2002
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	:	
SECRETARY OF LABOR,	:	Docket No. KENT 2003-86-R
MINE SAFETY AND HEALTH	:	Citation No. 7648560; 5/21/2002
ADMINISTRATION (MSHA),	:	
Respondent	:	Docket No. KENT 2003-87-R
	:	Citation No. 7648561; 5/21/2002
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	:	Docket No. KENT 2003-88-R
	:	Citation No. 7648562; 5/21/2002
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	:	Docket No. KENT 2003-89-R
	:	Citation No. 7648563; 5/21/2002
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	:	Docket No. KENT 2003-90-R
	:	Citation No. 7648565; 5/30/2002
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	:	Docket No. KENT 2003-91-R
	:	Citation No. 7648566; 5/31/2002
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	:	Docket No. KENT 2003-92-R
	:	Citation No. 7648567; 5/31/2002
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	:	Docket No. KENT 2003-93-R
	:	Citation No. 7648572; 6/12/2002
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	:	Docket No. KENT 2003-94-R
	:	Citation No. 7648685; 7/16/2002
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	:	
	:	Grand Rivers Terminal
	:	Mine ID 15-18234

ORDER OF DISMISSAL

Before: Judge Barbour

On November 4, 2002, counsel for the operator, Kinder Morgan Operating, L.P. (“Kinder”) filed a notice of contest for ten citations issued in the above captioned cases. In the notice of contest, Kinder admits the untimely filing, but contends its employees inadvertently failed to forward the citations to company officials due to the employees’ confusion over MSHA jurisdiction in other cases currently on appeal in the U.S. Court of Appeals for the 6th Circuit. The Secretary of Labor (“Secretary”), subsequently filed an answer and Motion to Dismiss, arguing that Commission case law requires the dismissal of contest proceedings if they are not timely filed.

Although Kinder may have been confused about MSHA jurisdiction, the Commission has made no exception to the 30 day restriction for “confusion.” As the Secretary correctly asserts, a long line of cases dating back to the Interior Board of Mine Operation Appeals have held the late filing of notices of contest of citations is not permissible under the Mine Act and under its predecessor the Federal Coal Mine Health and Safety Act of 1969. *Consolidation Coal Co.*, 1 MSHC 1029 (1972); *Old Ben Coal Co.*, 1 MSHC 1330 (1975); *Alexander Brothers*, 1 MSHC 1760 (1979); *Island Creek Coal Co. v. Mine Workers*, 1 FMSHRC 989 (Aug. 1979); *Amax Chemical Corp.*, 4 FMSHRC 1161 (June 1982); *Industrial Resources, Inc.*, 7 FMSHRC 416 (Mar. 1985); *Allentown Cement Company, Inc.*, 8 FMSHRC 1513 (Oct. 1986); *Rivco Dredging Corp.*, 10 FMSHRC 889 (July 1988); *Big Horn Calcium*, 12 FMSHRC 463 (Mar. 1990); *Prestige Coal Co.*, 13 FMSHRC 93 (Jan. 1991); *Costain Coal Inc.*, 14 FMSHRC 1388 (Aug. 1992); *Diablo Coal Co.*, 15 FMSHRC 1605 (Aug. 1993); *C and S Coal Co.*, 16 FMSHRC 633 (Mar. 1994); *Asarco, Inc.*, 16 FMSHRC 1328 (June 1994); *See also, ICI Explosives USA, Inc.*, 16 FMSHRC 1794 (Aug. 1994).

Accordingly, the Secretary’s Motion to Dismiss is **GRANTED**. Kinder should note, however, that the failure properly to contest a citation does not preclude it from challenging in a subsequent civil penalty proceeding the violations alleged in the citations.

David F. Barbour
Chief Administrative Law Judge

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