

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W., 6TH FLOOR
WASHINGTON, D. C. 20006-3868

May 27, 1997

M. A. WALKER CO., INC.,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. KENT 97-83-RM
	:	Citation No. 4554008; 10/23/96
v.	:	
SECRETARY OF LABOR,	:	Docket No. KENT 97-84-RM
MINE SAFETY AND HEALTH	:	Citation No. 4554010; 10/23/96
ADMINISTRATION (MSHA)	:	
Respondent	:	Indian Creek Underground
	:	
	:	Mine ID 15-00111

ORDER OF DISMISSAL

Before: Judge Merlin

On December 31, 1996, the operator filed notices of contest of citations which were assigned the above-captioned docket numbers. On February 20, 1997, the Solicitor filed answers to the contests.

On February 27, 1997, I issued an order directing the parties to set forth their positions with respect to whether these cases should be dismissed for untimely filing. Under the Mine Act and Commission regulations, a notice of contest of a citation must be filed within 30 days of the date the citation is issued. 30 U.S.C. ' 815(d), 29 C.F.R. ' 2700.20(b). After a review of the files, it appeared that the operator's contests were late.

On March 31, 1997, the Solicitor filed her response to the February 27 order. The Solicitor argues that these cases should be dismissed since the contests were not filed within 30 days of the date of the issuance of the citations.

On April 30, 1997, an order to show cause was issued directing the operator to file its response to the February 27 order and on May 16, 1997, the operator filed its response. The operator states that the notices were misplaced due to limited administrative staff and no formal legal training.

As noted above, the Mine Act and Commission regulations require that the operator contest

a citation within 30 days of its issuance. Notice is completed upon mailing. J.P. Burroughs, 3 FMSHRC 854 (1981). The citations in these cases were issued on October 23, 1996, and the contests mailed on December 23, 1996, which were therefore, 31 days late.

A long line of decisions going back to the Interior Board of Mine Operation Appeals holds that cases contesting the issuance of a citation must be brought within the statutory prescribed 30 days or be dismissed. Consolidation Coal Company, 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 (March 1985); Allentown Cement Company, Inc., 8 FMSHRC 1513 (October 1986); Rivco Dredging Corporation, 10 FMSHRC 889 (July 1988); Big Horn Calcium, 12 FMSHRC 463 (March 1990); Prestige Coal Co., 13 FMSHRC 93 (January 1991); Costain Coal Inc., 14 FMSHRC 1388 (August 1992); Diablo Coal Company, 15 FMSHRC 1605 (August 1993); C and S Coal Company, 16 FMSHRC 633 (March 1994); Asarco, Incorporated, 16 FMSHRC 1328 (June 1994); See also, ICI Explosives USA, Inc., 16 FMSHRC 1794 (August 1994).

Nothing in the Mine Act or applicable regulations supports relieving an operator of the 30 day time requirement because the operator lacks the staff or legal training. Nor does relevant case law support such an approach. Only when the operator's delay was caused by MSHA's own conduct has late filing been permitted. Consolidation Coal Company, 19 FMSHRC 816 (April 1997); Blue Diamond Coal Company, 11 FMSHRC 2629 (Dec. 1989), See also, Freeman Coal Mining Corporation, 1 MSHC 1001 (1970). Therefore, the contests must be dismissed as untimely.

The operator should be aware, however, that it can contest these citations when MSHA proposes civil penalty assessments for the violations. 29 C.F.R. ' 2700.21.

In light of the foregoing, it is **ORDERED** that these case be **DISMISSED**.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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