

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

July 30, 2001

KINDER MORGAN OPERATING LTD,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. KENT 2001-264-R
	:	Citation No. 7641370/01; 2/26/2001
v.	:	
	:	Docket No. KENT 2001-265-R
	:	Citation No. 7641371/01;2/26/2001
	:	
	:	Docket No. KENT 2001-266-R
	:	Citation No. 7641372/01/02;2/26/2001
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. KENT 2001-267-R
Respondent	:	Citation No. 7641373/01;2/26/2001
	:	
	:	Docket No. KENT 2001-268-R
	:	Citation No. 7641374/01/02;2/26/2001
	:	
	:	Docket No. KENT 2001-269-R
	:	Citation No. 7641375/01;2/26/2001
	:	
	:	Docket No. KENT 2001-270-R
	:	Citation No. 9898588;2/8/2001
	:	
	:	Grand Rivers Terminal
	:	Mine ID 15-18234

DISMISSAL ORDER

These cases are before me on Notices of Contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The Secretary has moved to dismiss them as having been untimely filed. The Respondent opposes the motion. For the reasons set forth below, the motion is granted.

Section 105(d) requires that a notice contesting the issuance of a citation must be filed within 30 days of receipt of the citation. In accordance with the Act, Commission Rule 20(b), 29 C.F.R. § 2700.20(b), requires the same thing. The most recent of the seven citations in these cases was issued on February 26, 2001. Therefore, the notice of contest should have been filed by March 27, 2001. However, all of the notices of contest were filed on May 4, 2001.

While acknowledging that the notices of contest were not filed within the prescribed 30 days, Kinder Morgan states that its on-site manager “inadvertently failed to forward to Contestant’s management staff or its counsel copies” of the citations and that the manager “subsequently” believed that the citations were included in a stay of other citations (not involved in these proceedings). (Resp. at 2-3.) Therefore, it requests that the late filing be excused.

Unfortunately, as former Chief Judge Merlin has noted: “A long line of decisions going back to the Interior Board of Mine Operations Appeals holds that cases contesting the issuance of a citation must be brought within the statutor[il]y prescribed 30 days or be dismissed.” *M.A. Walker Co., Inc.*, 19 FMSHRC 897, 898 (May 1997) (citations omitted). Further, late filing has been permitted only when the delay was caused by MSHA’s conduct. *Id.*

Since there is no allegation that the delay was caused by MSHA, I am constrained to grant the Secretary’s motion. Accordingly, it is **ORDERED** that the captioned cases are **DISMISSED**.¹

T. Todd Hodgdon
Administrative Law Judge

¹ This dismissal will not prevent the Respondent from raising its jurisdictional challenge to these citations, since the issue can still be raised by contesting the civil penalties proposed for the citations. 29 C.F.R. § 2700.21. Indeed, the citation at issue in Docket No. KENT 2001-270-R is already before me in Docket No. KENT 2001-281.

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