

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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November 6, 2007

SECRETARY OF LABOR,	:	CONTEST PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2007-37-R
Respondent,	:	Citation No. 7493853; 10/27/2006
	:	
v.	:	Docket No. LAKE 2007-38-R
	:	Citation No. 7493854; 10/27/2006
	:	
	:	Docket No. LAKE 2007-39-R
	:	Citation No. 7493855; 10/27/2006
	:	
	:	
SOLAR SOURCES, INC.,	:	Mine ID: 12-01732
Contestant,	:	Mine: Craney Mine

**ORDER OF DISMISSAL**

On January 5, 2007, Counsel for Solar Sources, Inc. (“Solar Sources”) filed notices of contest with the Commission in the above captioned cases for three violations that were issued against Solar Sources on October 27, 2006, by Mine Safety and Health Administration (“MSHA”) inspectors.

On January 16, 2007, the Commission received the Secretary’s Motion to Dismiss on the grounds that Solar Sources failed to file its notices of contest within the 30-day period prescribed by Commission Rule 20(b), 29 C.F.R. § 2700.20(b). Sec’y Mot. 2. In its response to the Secretary’s motion, Solar Sources asserts that two successive documents issued by MSHA titled “Mine Citation/Order Continuation” led them to believe that MSHA had extended the time to file its Notices of Contest. Solar Sources Mot. 1-2. It further contends that, “[e]ven if Solar Sources’ Notice of Contest was untimely filed, the Commission should accept the filing because its untimeliness was a result of [its] mistake and/or excusable neglect.” Solar Sources Mot. 2. The Secretary maintains that the aforementioned documents were issued to Solar Sources, but she disputes Solar Sources contention that the MSHA inspectors’ subsequent actions to modify the abatement time extended the time to file its Notices of Contest. Sec’y Mot. 3.

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 nor 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).

The late filing of a contest of a citation or order has been allowed where the Secretary's own conduct is responsible for the operator's delay in filing a notice of contest. *Blue Diamond Coal Co.*, 11 FMSHRC 2629 (Dec. 1989); *See also, Consolidation Coal Co.*, 19 FMSHRC 816 (April 1997); *Freeman Coal Mining Corp.*, 1 MSHC 1001 (1970). However, I agree with the Secretary that the present situation does not warrant an exception to the general rule because the late filing was not due to the actions of the Secretary. In addition, Solar Sources has the benefit of Counsel, as shown by the certificate of service on the notice of contest dated January 5, 2007, and Counsel should have been aware of the strict 30-day rule. Moreover, Solar Sources has been before the Commission in other matters and should be familiar with Commission rules.

Accordingly, the Secretary's motion to dismiss is **GRANTED**. The operator should note, however, that the failure to properly contest the citations does not preclude it from challenging in a subsequent civil penalty proceeding the violations and findings alleged in the citations.

Robert J. Lesnick  
Chief Administrative Law Judge

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