

SECRETARY OF LABOR,

Complainant,

V.

GILLETTE MASONRY, Inc.,

Respondent.

OSHRC Docket No. 03-2167

### DECISION AND ORDER

Following an inspection of the Respondent's place of business in Linesville, PA, the Secretary issued two citations on September 25, 20003, alleging serious and other than serious violations of the Occupational Safety and Health Act of 1970, 28 U.S.C. 651 et seq. with a penalty of \$500.00. The citations were received by the Respondent on September 29, 20003. Section 10(a) of the Act requires an employer to notify the Secretary of the intent to contest a citation within 15 working days of receipt, and the failure to file a timely notice results in the citation becoming a final order of the Commission by operation of law. The Respondent's notice of contest was due no later than October 21, 20003. The Respondent's notice of contest was dated October 22, 20003, but was postmarked October 29, 20003, and was received by the Secretary on October 31, 20003. The Secretary filed a motion to dismiss the Respondent's late notice of contest on December 12, 20003. There was no response filed to the motion.

The Secretary's motion to dismiss the Respondent's notice of contest is GRANTED, and the citations issued herein are AFFIRMED in all respects.

SO ORDERED.

IRVING Sommer  
Chief Judge

DATED: January 12, 2004  
Washington, D.C.