



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,
v.
ST. THOMAS GAS COMPANY
Respondent.

OSHRC DOCKET
NO. 94-0136

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on March 22, 1994. The decision of the Judge will become a final order of the Commission on April 21, 1994 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before April 11, 1994 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: March 22, 1994

DOCKET NO. 94-0136

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
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Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

ST. THOMAS GAS CO., INC.,

Respondent.

Docket No. 94-0136

ORDER

By motion dated February 3, 1994, the Secretary has moved to dismiss the Respondent's notice of contest as not being timely filed under Section 10 of the Act. The Respondent did not file a response to the motion.

The record demonstrates that two citations were issued to the Respondent on November 26, 1993, and received on December 1, 1993. Under Section 10(a) of the Act, 29 U.S.C. 659(a), an employer must notify the Secretary that it intends to contest the citations or proposed penalties within fifteen(15) working days of its receipt. The Respondent had until December 22, 1993, to file its notice of contest, but did not do so, filing a letter dated December 29, 1993, and received by OSHA on January 3, 1994. No sufficient reason was given for the late filing. There is no evidence that the delay in filing was caused by "the Secretary's deception or failure to follow proper procedures." Atlantic Marine, Inc. v. OSAHRC and Dunlop, 524 F2d 476 (5th Cir., 1975), nor is there any evidence that the Respondent is entitled to any relief under Rule 60 (b) of the Federal Rules of Civil Procedure.

Accordingly, the Secretary's motion to dismiss the Respondent's notice of contest is GRANTED. IT IS FURTHER ORDERED that the citation(s), penalties, and the abatement dates are AFFIRMED as issued.

A handwritten signature in black ink, appearing to read 'Irving Sommer', written over a horizontal line.

IRVING SOMMER
Judge, OSHRC

DATED: MAR 21 1994
Washington, D.C.