

CCASE:  
PITTSBURG & MIDWAY V. MSHA  
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PITTSBURG & MIDWAY COAL : CONTEST PROCEEDING  
 MINING COMPANY, :  
 Contestant : Docket No. KENT 93-181-R  
 : Order No. 3857652; 11/3/92  
 v. :  
 : Sebree No. 1 Mine  
 SECRETARY OF LABOR, :  
 MINE SAFETY AND HEALTH : Mine ID 15-17044  
 ADMINISTRATION (MSHA), :  
 Respondent :

ORDER DENYING MOTION FOR EXPEDITED HEARING  
 AND PREHEARING ORDER

Petitioner included in its Notice of Contest a Request for Expedited Hearing on the ground that "the Sebree Mine will be subject to additional improperly issued closure orders under Section 104(d)(2) of the [Act] as a result of the wrongfully issued contested Order."

The Secretary opposes the request for an expedited hearing on the grounds that it does not show extraordinary conditions warranting an expedited hearing, it would establish an inappropriate precedent to grant the request, it would be unfair to other operators to grant the request, and it would impose an unreasonable administrative and budget burden on the Secretary's limited resources for Mine Act hearings.

Judge John J. Morris denied a similar motion for an expedited hearing which like the instant matter was predicated solely on the basis of the issuance by MSHA of 104(d) citations/orders. *Medicine Bow Coal Co. v. Secretary of Labor*, 12 FMSHRC 904 (April, 1990). Initially noting that like the instant matter the enforcement documents were not issued pursuant to 107 of the Act, Judge Morris ruled:

In the instant case contestant's sole basis for an expedited hearing is that it "is subject to a continuing possibility of the issuance of orders pursuant to Section 104(d) of the Act." However, Contestant's position is not unique. Every mine operator is subject to the "possibility" of the issuance of "104(a)" orders. In addition, these cases both 104(d) orders and contestant has failed

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to allege that it is within the criteria required by subparagraphs (A), (B) and (C) of 105(a) (B)(2).

I conclude that the Secretary's opposition to the request for expedited hearing is well taken.

Accordingly, the request for expedited hearing is DENIED.

In accordance with the provisions of section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the above proceeding will be called for hearing on the merits at a time and place to be designated in a subsequent notice.

1. On or before January 25, 1993, the parties shall confer for the purpose of discussing settlement and stipulating as to matters not in dispute. If settlement is reached, a motion for its approval shall be filed by the Secretary of Labor no later than February 1, 1993.

2. If settlement is not agreed upon, the parties shall send to each other and to me no later than February 1, 1993, synopses of their expected legal arguments, expected proof, lists of exhibits that may be introduced, and matters to which they can stipulate at the hearing. Each party shall also state its best estimate of the length of time necessary to present its case at the hearing.

William Fauver  
Administrative Law Judge

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