

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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February 24, 2016

JONATHAN BETHEL WOODWARD,  
Complainant

v.

CARMEUSE LIME AND STONE,  
Respondent

DISCRIMINATION PROCEEDING

Docket No. SE 2016-59-DM  
SE-MD-15-23

Mine: Filled Products – North Mill  
Mine ID: 09-01094

**ORDER**

This proceeding is before me upon a complaint of discrimination under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(3).

The Respondent in this 105(c)(3) action has requested a subpoena to compel the Mine Safety and Health Administration (MSHA) to produce its investigative file. In order to protect the rights of both parties to this litigation,<sup>1</sup> under Rule 60(a) of the Commission’s procedural rules, 29 C.F.R. § 2700.60(a), I am ordering *sua sponte* the compulsory production of documents, namely MSHA’s investigative file in the matter of *Woodward v. Carmeuse Lime & Stone*, MSHA Case No. SE-MD-15-23. The file will be submitted to the Court for in camera review before distribution of properly releasable documents to the parties.<sup>2</sup>

MSHA is hereby **ORDERED** to submit the investigative file directly to me by mail marked “Private, Judge’s Eyes Only” within 30 days of the date of this order.



Priscilla M. Rae  
Administrative Law Judge

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<sup>1</sup> I note that the Complainant is proceeding *pro se* in this matter.

<sup>2</sup> The Respondent previously filed a FOIA (Freedom of Information Act) request for the investigative file which was answered by a letter from MSHA stating that the statutory time limits for processing the request could not be met due to “unusual circumstances.” This explanation is vague and broad and will result in effective denial of the FOIA request, as production will be untimely for litigation purposes. I find this denial suspect and contrary to the public’s right to information and to the opinion expressed in *Justice Marshall v. MSHA*, Civil Action No. 2:14-14438 (S.D.W. Va. July 31, 2015) (memorandum opinion and order compelling MSHA to produce documents for in camera review).

Enclosure: Subpoena to Thomas W. Charboneau, Acting Director, MSHA Office of Assessments, Accountability, Special Enforcement & Investigations

Distribution:

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