

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, DC 20001

March 4, 2005

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 2004-147
Petitioner	:	A.C. No. 11-00877-34581
	:	
v.	:	
	:	
WABASH MINE HOLDING CO.,	:	Wabash Mine
Respondent	:	

ORDER MODIFYING CAPTION

AND

DEFERRING ON RULING ON MOTION

TO VACATE CIVIL PENALTIES

The respondent has moved to modify the captioned proceeding to reflect the correct mine operator name is Wabash Mine Holding Company (Wabash). Foundation Midwest Holding Company, the previously named respondent in this matter, is an affiliate of Wabash. The Secretary does not oppose Wabash’s motion. Accordingly, **IT IS ORDERED** that the captioned proceeding **IS MODIFIED** to reflect Wabash Mine Holding Company as the named respondent.

This matter is scheduled for hearing on May 18, 2005. Relying on the Commission’s decision in *Twentymile Coal Co.*, 26 FMSHRC 666 (Aug. 2004), *appeal docketed*, No. 04-1292 (D.C. Cir. Aug. 30, 2004), Wabash filed a motion to vacate the proposed penalties asserting they were not proposed by the Secretary “within a reasonable time” as specified in Section 105(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(a). The Secretary opposes Wabash’s motion. During a March 3, 2005, telephone conference I advised counsel for the parties that I considered the motion to be premature because liability has not been established. Counsel were advised that I would defer ruling on the motion until after the hearing and that they would be afforded with the opportunity to further address the “reasonable time” issue in their post-hearing briefs.

Jerold Feldman
Administrative Law Judge
(202) 434-9967

Distribution: (Certified Mail)

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