

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 26, 2007

WAMPUM HARDWARE COMPANY,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. LAKE 2007-155-RM
v.	:	Citation No. 6169828; 06/20/2007
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, MSHA,	:	Petersburg Mine
Respondent	:	Mine ID 33-04195 BH8

## ORDER OF ASSIGNMENT

This case is before me pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 518(d). The Contestant “requests that a hearing be scheduled promptly on this matter.”

Other than this bare request, the Contestant has not offered any reason for holding an expedited proceeding. Under Commission Rule 52, which was not referenced in the Contestant’s motion, a party may request an expedited hearing on as little as “4 days notice.” 29 C.F.R. § 2700.52(b). While the Procedural Rules do not offer a basis upon which such a request may be granted, judges have held that a mine operator must show “extraordinary or unique circumstances resulting in continuing harm or hardship.” *Mountain Cement Co.*, 23 FMSHRC 694, 694 (June 2001) (ALJ); *Consolidation Coal Co.*, 16 FMSHRC 495, 496 (Feb. 1994) (ALJ); *Southwestern Portland Cement Co.*, 16 FMSHRC 2187, 2187 (Oct. 1994) (ALJ). Whether a party should be granted an expedited hearing is at the discretion of the assigned judge. *See, e.g., Wyoming Fuel Co.*, 14 FMSHRC 1282, 1287 (Aug. 1992) (Commission holding that “informed discretion remains with Commission judges” in scheduling expedited hearings on imminent danger orders.)

Since the Contestant does not mention Rule 52 and does not attempt to make a showing of extraordinary or unique circumstances, I will treat the request for an expedited proceeding as a request for a hearing prior to the assessment of civil penalty. Counsel must be mindful that “expedited hearing” is term of art for Rule 52 proceedings, and she should not use this term unless she is requesting such a proceeding.

The assigned administrative law judge will make the determination as to whether a hearing will be held prior to the assessment of civil penalty or the filing of a civil penalty case.

Accordingly, this case is hereby assigned to Administrative Law Judge Jerold Feldman. All future communications regarding this case should be addressed to Judge Feldman at the

following address:

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Robert J. Lesnick  
Chief Administrative Law Judge

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/rao