

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 26, 2006

LAUREL AGGREGATES, INC.,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. PENN 2006-217-RM
	:	Citation No. 6038673; 06/07/2006
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	:	Docket No. PENN 2006-218-RM
	:	Citation No. 6038638; 06/07/2006
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	:	Docket No. PENN 2006-219-RM
	:	Citation No. 6038639; 06/07/2006
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	:	Docket No. PENN 2006-220-RM
	:	Citation No. 6038641; 06/07/2006
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	:	Docket No. PENN 2006-221-RM
	:	Citation No. 6038643; 05/30/2006
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	:	Docket No. PENN 2006-222-RM
	:	Citation No. 6038644; 05/30/2006
v.	:	
	:	Docket No. PENN 2006-223-RM
	:	Citation No. 6038645; 05/30/2006
	:	
	:	Docket No. PENN 2006-224-RM
	:	Citation No. 6038646; 05/30/2006
	:	
	:	Docket No. PENN 2006-225-RM
	:	Citation No. 6038647; 05/30/2006
	:	
	:	Docket No. PENN 2006-226-RM
	:	Citation No. 6038648; 05/30/2006
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. PENN 2006-227-RM
Respondent	:	Citation No. 6038649; 05/30/2006
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	:	Docket No. PENN 2006-228-RM
	:	Citation No. 6038650; 05/30/2006

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: Docket No. PENN 2006-229-RM
: Citation No. 6038651; 05/30/2006
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: Docket No. PENN 2006-230-RM
: Citation No. 6038652; 05/30/2006
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: Docket No. PENN 2006-231-RM
: Citation No. 6038653; 06/07/2006
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: Docket No. PENN 2006-232-RM
: Citation No. 6038654; 05/30/2006
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: Docket No. PENN 2006-233-RM
: Citation No. 6038655; 05/30/2006
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: Docket No. PENN 2006-234-RM
: Citation No. 6038657; 05/30/2006
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: Docket No. PENN 2006-235-RM
: Citation No. 6038658; 05/30/2006
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: Docket No. PENN 2006-236-RM
: Citation No. 6038659; 05/30/2006
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: Docket No. PENN 2006-237-RM
: Citation No. 6038660; 05/30/2006
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: Docket No. PENN 2006-238-RM
: Citation No. 6038661; 05/30/2006
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: Docket No. PENN 2006-239-RM
: Citation No. 6038662; 05/30/2006
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: Docket No. PENN 2006-240-RM
: Citation No. 6038663; 05/30/2006
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: Docket No. PENN 2006-241-RM
: Citation No. 6038664; 05/30/2006
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: Docket No. PENN 2006-242-RM
: Citation No. 6038665; 05/31/2006
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: Docket No. PENN 2006-243-RM
: Citation No. 6038666; 05/31/2006
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: Docket No. PENN 2006-244-RM
: Citation No. 6038667; 05/31/2006
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: Docket No. PENN 2006-245-RM
: Citation No. 6038668; 05/31/2006
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: Docket No. PENN 2006-246-RM
: Citation No. 6038669; 06/01/2006
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: Docket No. PENN 2006-247-RM
: Citation No. 6038670; 06/07/2006
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: Lake Lynn Quarry
: Mine ID 36-08891

ORDER TO SHOW CAUSE

These proceedings are before me based on a Notice of Contest of the subject citations filed with the Commission on June 26, 2006, pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, (the Mine Act), 30 C.F.R. § 815(d). In its contests, Laurel Aggregates, Inc. (Laurel) denies each and every allegation contained in the contested citations. Laurel identifies the relief sought as a Commission review and declaration that the contested citations are invalid and void. (*Laurel Contest*, p.18). Such a declaration can only be rendered after a hearing on the merits of the contested citations.

The Secretary filed an answer to Laurel's contest on July 17, 2006, at which time the Secretary moved to stay these matters pending the related civil penalty case. Laurel did not oppose the Secretary's motion.

An operator served with a citation alleging a violation of the Mine Act, or alleging a violation of a mandatory safety standard that has been abated, may immediately contest the citation under section 105(d) of the Mine Act without waiting for notification of the proposed penalty assessment. 30 C.F.R. § 815(d). In such cases, section 105(d) provides that "the Commission shall afford an opportunity for a hearing." An operator may have an interest in an early hearing, such as in cases where continued abatement is expensive, or where the validity of the citation or order impacts on an operator's continued exposure to 104(d) withdrawal sanctions. *Energy Fuels Corporation*, 1 FMSHRC 299, 307-08 (May 1979). Thus, the purpose of a 105(d) contest proceeding is to adjudicate the validity of a citation without waiting for the Secretary's proposed civil penalty.

Alternatively, if the operator does not immediately contest a citation after it is issued, the operator may wait to contest the citation in a civil penalty proceeding pursuant to section 105(a) of the Mine Act. 30 C.F.R. § 815(a). Waiting to contest citations until after the civil penalty is

proposed facilitates settlement negotiations and limits discovery to citations that can only be resolved through litigation.

Commission Rule 20, 29 C.F.R. § 2700.20, implements the contest provisions of section 105(d). Commission Rule 20(e)(1)(ii) provides that a notice of contest shall provide a plain statement of the relief requested. The relief requested by Laurel is a Commission hearing on the merits of the citations without waiting for the Secretary's proposed civil penalties.

By filing a contest on June 26, 2006, seeking an early adjudication, only to agree shortly thereafter to stay its contest pending the civil penalty case, it appears that Laurel is, in substance, waiting for a disposition on the merits *after* the civil penalty is proposed. In other words, Laurel has not adequately articulated the relief it seeks in its 105(d) notice of contest, since it has elected to wait for the 105(a) civil penalty matter.

The Commission's processing of Laurel's 105(d) contests requires the duplication of docket files with incidental copying and storage for both the contest dockets and the ultimate civil penalty docket. Moreover, Laurel's 105(d) Notice of Contest requires *pro forma* rulings on stay motions that are lacking in substance. I am also cognizant of the Secretary's burden of answering multitudes of 105(d) contests, only to await duplication of her answers in the ultimate civil penalty proceedings. Simply put, a stay order postpones the pre-civil penalty hearing requested by Laurel; a hearing that Laurel implicitly concedes it does not want.

In view of the above, Laurel **IS ORDERED TO SHOW CAUSE**, in writing, **within 15 days from the date of this Order**, why its 105(d) Notice of Contest of the subject citations should not be dismissed because of its apparent contravention of Commission Rule 20(e)(1)(ii), and because it is a duplicative and needless consumption of the Commission's resources. Laurel's response should include a statement of the facts, if any, that distinguish its contest from the underlying facts in *Marfork Coal Company, Inc. (Marfork)*, Docket Nos. WEVA 2006- 788-R through WEVA 2006-790-R. *Order of Dismissal*, 29 FMSHRC ____ (September 27, 2006).¹ Laurel's response should specifically address whether the statutory and Commission Rule provisions, and the case law cited in *Marfork* support its contest. In addition, using traditional methods of statutory construction, Laurel should state why it believes its contest satisfies the provisions of section 105(d).

Jerold Feldman
Administrative Law Judge

¹ A copy of the recent Marfork *Order of Dismissal* has been provided to the parties.

Distribution: (Certified Mail)

David J. Hardy, Esq., Spilman, Thomas & Battle, PLLC, 300 Kanawha Blvd. East,
P.O. Box 273, Charleston, WV 25321

John M. Strawn, Esq., Office of the Solicitor, U.S. Department of Labor, Suite 630 East,
The Curtis Center, 170 S. Independence Mall West, Philadelphia, PA 19106-3305

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