

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

601 New Jersey Avenue, N.W. Suite 9500

Washington, DC 20001-2021

August 28, 2006

SPARTAN MINING COMPANY,

Contestant

: CONTEST PROCEEDINGS

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: Docket No. WEVA 2006-629-R

: Citation No. 7062296; 05/15/2006

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: Docket No. WEVA 2006-630-R

: Citation No. 7062297; 05/15/2006

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: Docket No. WEVA 2006-631-R

: Citation No. 7062298; 05/15/2006

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: Docket No. WEVA 2006-632-R

: Citation No. 7062299; 05/15/2006

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: Docket No. WEVA 2006-633-R

: Citation No. 7062300; 05/15/2006

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: Docket No. WEVA 2006-634-R

: Citation No. 6601519; 05/15/2006

v.

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: Docket No. WEVA 2006-635-R

: Citation No. 6601515; 05/15/2006

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: Docket No. WEVA 2006-636-R

: Citation No. 6601518; 05/15/2006

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: Docket No. WEVA 2006-637-R

: Citation No. 6601521; 05/15/2006

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: Docket No. WEVA 2006-638-R

: Citation No. 6601523; 05/15/2006

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: Docket No. WEVA 2006-639-R

: Citation No. 6601524; 05/15/2006

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: Docket No. WEVA 2006-640-R

: Citation No. 6601526; 05/15/2006

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: Docket No. WEVA 2006-681-R

: Citation No. 6601530; 05/16/2006

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SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION, (MSHA),
Respondent

: Docket No. WEVA 2006-682-R
: Citation No. 6601532; 05/16/2006
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: Docket No. WEVA 2006-683-R
: Citation No. 6601533; 05/16/2006
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: Docket No. WEVA 2006-684-R
: Citation No. 6601534; 05/16/2006
: Docket No. WEVA 2006-685-R
: Citation No. 6601535; 05/16/2006
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: Docket No. WEVA 2006-686-R
: Citation No. 7062302; 05/16/2006
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: Docket No. WEVA 2006-687-R
: Citation No. 7458067; 05/16/2006
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: Docket No. WEVA 2006-688-R
: Citation No. 7458068; 05/16/2006
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: Docket No. WEVA 2006-689-R
: Citation No. 7458069; 05/16/2006
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: Docket No. WEVA 2006-690-R
: Citation No. 7458070; 05/16/2006
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: Docket No. WEVA 2006-691-R
: Citation No. 7458071; 05/16/2006
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: Docket No. WEVA 2006-692-R
: Order No. 7458072; 05/16/2006
:
: Docket No. WEVA 2006-693-R
: Citation No. 7458073; 05/16/2006
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: Docket No. WEVA 2006-694-R
: Citation No. 7458074; 05/16/2006
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: Docket No. WEVA 2006-695-R
: Citation No. 7458075; 05/16/2006
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: Docket No. WEVA 2006-696-R
: Citation No. 7460800; 05/16/2006

: Laurel Creek/Spirit Mine
: Mine ID 46-08387

ORDER TO SHOW CAUSE

These cases are before me on 28 Notices of Contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(d). The Secretary, by counsel, has requested that the cases be continued pending the filing of the corresponding civil penalty cases. The motion states that the Contestant does not object to it. However, before ruling on the motion, additional information is needed.

It appears from the number of notices of contest before me that counsel for the Contestant is routinely filing notices of contest in all cases where, as in the instant cases, the violations are alleged to be “significant and substantial.” While a literal reading of the law may permit such filings, there does not appear to be any exigent reason for them, nor do they foster cooperation among the parties or facilitate judicial economy.

Section 105(d) of the Act and Commission Rule 20, 29 C.F.R. § 2700.20, permit an operator to contest an order or citation without waiting for a civil penalty to be assessed. *Energy Fuels Corp.*, 1 FMSHRC 299, 308 (May 1979). In *Energy Fuels*, the Commission noted that the reason for this is that “the operator’s interest in immediately contesting the allegation of violation and the special findings in a citation may be considerable” when “related withdrawal orders may be issued before the Secretary has proposed a penalty.” (*Id.*) However, the Commission went on to say that if “the operator . . . lacked a need for an immediate hearing, *we would expect him to postpone his contest of the entire citation until a penalty is proposed.*” (*Id.*) (emphasis added.)

Obviously, the operator in these cases does not have an immediate need for a hearing as it has agreed to the continuance. Nevertheless, rather than follow the advice of the Commission, the operator’s counsel has filed the notices of contest. This despite the fact that the failure to file a notice of contest of a citation or order will not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings contained in the citation or order, including whether the violation was “significant and substantial” or the result of an “unwarrantable failure.” 29 C.F.R. § 2700.21; *Quinland Coals, Inc.*, 9 FMSHRC 1614, 1621 (Sept. 1987).

It is apparent that the practice of filing a notice of contest for every citation or order containing special findings places a significant burden on the Secretary. More importantly, processing notices of contests results in the Commission’s Docket Office having to prepare duplicate files for the same violation, with the incidental copying associated therewith. While up to 20 orders and citations are included in one civil penalty case when it is received by the Docket Office, each contest case involves a single order or citation. In turn, this necessitates more than twice the storage space. It also requires the *pro forma* ruling on unopposed continuance or stay motions in cases that were never intended to be contested immediately.

Accordingly, Spartan Mining Company is **ORDERED TO SHOW CAUSE**, within **15 days** of the date of this order, why its notices of contests should not be dismissed as an abuse of the Commission's processes. The Secretary will have **10 days** from the date Highland's response is filed to file a reply.

T. Todd Hodgdon
Administrative Law Judge
(202) 434-9973

Distribution: (Certified Mail)

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