

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 Pennsylvania Avenue, NW, Suite 520N  
Washington, DC 20004

May 4, 2015

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

v.

SPARTAN MINING COMPANY, LLC,  
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2013-109  
A.C. No. 46-01544-285119-02

Docket No. WEVA 2012-1373  
A.C. No. 46-01544-290889-01

Docket No. WEVA 2012-1746  
A.C. No. 46-01544-298372

Mine: Road Fork #51

**ORDER**

Before: Judge Feldman

The captioned consolidated proceedings are before me upon petitions for assessment of civil penalty filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”). 30 U.S.C. § 815(d). The five citations that are the subjects of the captioned civil penalty proceedings were all issued on February 1, 2012.<sup>1</sup> These citations were issued to the same mine foreman, in the same part of the mine, on the same day, and by the same inspectors. In the interest of judicial economy, and the Commission’s limited resources, these civil penalty matters were stayed on March 12, 2014, based on the parties’ representation that the Secretary had initiated an investigation to determine whether a personal liability case should be brought pursuant to the provisions of section 110(c) of the Mine Act. The stay was to be lifted upon completion of the Secretary’s investigation.

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<sup>1</sup> Citation Nos. 8120978, 8148651, 8148652, 8151811, and 8151812, are also the subjects of contest Docket Nos. WEVA 2012-720-R, WEVA 2012-721-R, WEVA 2012-722-R, WEVA 2012-723-R, and WEVA 2012-724-R. These contest proceedings were dismissed as moot on April 29, 2015, because they were superseded by the captioned civil penalty proceedings.

As noted by Judge Tureck:

Section 105(a) of the Act provides that “[i]f, after an inspection or investigation, the Secretary issues a citation or order under section 104, he shall, within a reasonable time after the termination of such inspection or investigation, notify the operator ... of the civil penalty proposed to be assessed ... for the violation cited ....” (Emphasis added.) Section 110(c) is silent regarding when an individual respondent must be notified of a proposed penalty assessment. However, since penalty assessments against individuals brought under § 110(c) arise from the same inspections as penalty assessments against operators, it would logically follow that the reasonable time requirement of § 105(a) should apply to penalty assessments brought under § 110(c).

*Sec’y v. Christopher Brinson, et al., employed by Kentucky-Tennessee Clay Co.*, 35 FMSHRC 1463, 1465 (May 2013) (ALJ) (citations omitted).

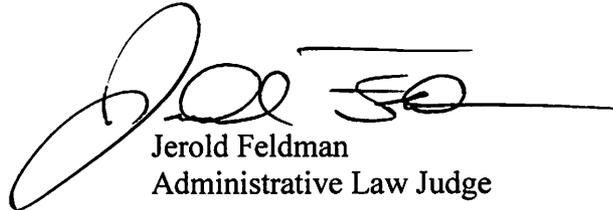
In *Sec’y of Labor v. Twentymile Coal Co.*, 411 F.3d 256, 261 (D.C. Cir. 2005), the court held that the “reasonable time” processing guidelines in section 105(a) of the Mine Act are intended to “spur the Secretary to action,” rather than to routinely confer rights on litigants that will limit the scope of the Secretary’s authority. However, the Secretary’s permissible procrastination is not without its limits. Significantly, even the Secretary has identified the parameters for satisfying the “reasonable time” provision contemplated by section 105(a). In this regard, MSHA’s Program Policy Manual provides:

Investigative timeframes have been established to help ensure the timely assessment of civil penalties against corporate directors, officers, and agents. Normally, such assessments will be issued within 18 months from the date of issuance of the subject citation or order. However, if the 18 month timeframe is exceeded, TCIO will review the case and decide whether to refer it to the Office of Special Assessments for penalty proposal. In such cases, the referral memorandum to the Office of Special Assessments will be signed by the Administrator.

I MSHA, U.S. Dep’t of Labor, *Program Policy Manual*, § 110(c) (2012).

Thus, even the Secretary has acknowledged that completion of section 110(c) investigations must be timely accomplished. In these matters, more than enough time has elapsed in that the Secretary has had more than three years (approximately 38 months) since the February 2012 issuance of the subject citations to complete his relevant 110(c) investigation.

Accordingly, **IT IS ORDERED** that the Secretary, **within 90 days from the date of this Order**, initiate a relevant 110(c) proceeding, or, alternatively, advise the undersigned that, based on his investigation findings, the Secretary has declined to bring any relevant 110(c) actions.<sup>2</sup> At such time, the stay in the captioned civil penalty matters will be lifted and the civil penalty matters will be scheduled for hearing. The failure to provide the results of the relevant 110(c) investigation within 90 days from the date of this Order will result in the dismissal of the captioned civil penalty proceedings for failure to prosecute.



Jerold Feldman  
Administrative Law Judge

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<sup>2</sup> The Secretary can provide notification of the status of the relevant 110(c) investigation to my law clerk, Avery Peechatka, at [apeechatka@fmshrc.gov](mailto:apeechatka@fmshrc.gov) or (202) 233-4010.