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SOL (MSHA) V. FRED KNOBEL  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
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April 22, 1993

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEST 92-375-M  
Petitioner : A.C. No. 26-02161-05503-A  
:  
v. : FKC Portable  
:  
FRED KNOBEL, employed by :  
FKC INCORPORATED, :  
Respondent :

PARTIAL SUMMARY DECISION

Before: Judge Cetti

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. et seq., the "Act." (Footnote 1) The Secretary charges that Fred Knobel as an agent of a corporate operator, namely FKC Incorporated, knowingly authorized, ordered, or carried out a violation of the mandatory safety standard 30 C.F.R. 56.14112(b) for the alleged failure to guard tail pulley on a portable rock crushing machine.

On the issue of jurisdiction the parties request a partial summary decision. I agree that such a decision may well be an efficient way to deal with this issue and result in an economy of the parties and Commission resources.

1 Section 110c of the Act provides:

Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act of any order incorporated in a decision issued under subsection (a) or section 105(c), any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d).

I  
STIPULATIONS

The parties have agreed to the following stipulations, which I accept:

At all times relevant in this matter:

1. Fred Knobel was the President of FKC Rock & Sand Company, Inc.

2. Fred Knobel was, and is, the President of FKC, Inc.

3. FKC, Inc. is a general contractor and is engaged in offsite grading, filling and leveling.

4. FKC, Inc. also grades local streets and roadways.

5. FKC, Inc. employs from 10 to 20 construction workers, depending on the needs of any given project.

6. FKC Rock & Sand Company, Inc. owned one portable rock crushing machine which was and is used to crush rock from construction excavation into smaller, more usable pieces.

7. FKC Rock & Sand Company, Inc.'s only business operation was the portable rock crushing machine.

8. The rock crusher owned by FKC Rock & Sand Company, Inc. was and is located in the Green Valley area, and was and is moved to various locations in that area depending upon need.

9. There was no excavation of materials performed by the rock crushing machine or by FKC Rock & Sand Company, Inc.

10. The rock crusher performs rock crushing for FKC, Inc. and other contractors.

11. On June 30, 1992, the rock crusher was being used to crush rock on a subcontract with other construction companies in Green Valley.

II

The Respondent requests a summary decision based upon the pleadings, papers, files, records and evidence herein, the affidavits of Glenn Dodd, Wes Parks and Pat L. Hickey, the Points and Authorities and its reply to Petitioner's Response to Motion for Summary Decision and Cross-Motion for Partial Summary Decision.

Petitioner's motion for summary decision on the issue of jurisdiction is based upon the arguments and authorities set

forth in Petitioner's Response to Motion for Summary Decision and Cross-Motion for Partial Summary Decision and the affidavits of Vernon Gomez and Arle Brown. In addition to the stipulations and material set forth above there is in the file a copy of Respondent's legal identity report dated July 5, 1990 signed by Respondent's executive secretary.

I have carefully reviewed the entire record including the arguments and points and authorities cited by the parties, the pleading, documents, affidavits and the stipulations.

Having considered all of the above and the research and arguments of both parties, I find the position of the Secretary on the issue of jurisdiction well stated, in accord with precedent, and meritorious. It is adopted here by reference.

Respondent's emphasis of the term "extracted" in his interpretation of the Mine Act's definition of mining overlooked the relevant terms of the definition of a mine as provided in section 3(h) of the Mine Act, 30 U.S.C. 801(3)(h).

The definition of a "coal or other mine" includes "equipment, machines, tool, or other property,...used in, or to be used in, the milling...or the work of preparing coal or other minerals..." 30 U.S.C. 802(h)(1)(c) (emphasis added). MSHA's jurisdiction over portable crushing operations in this case is predicated on the preparation activity of crushing rock into smaller usable pieces. The crushed rock was used for house pads and some was sold to various contractors who haul it away for use elsewhere.

Rock is ordinarily defined as any consolidated or coherent and relatively hard mass of mineral matter. Respondent utilized the machine, the portable crusher cited by MSHA, to crush rock into smaller usable sizes. This activity is properly characterized as the "work of preparing coal or other minerals" (emphasis added).

Accordingly, Respondent's reliance on the term "extraction" to argue that the portable crusher is not a mining operation is misguided. According to the definition of mining provided in section 3(h) of the Mine Act, the portable crusher and its use in crushing rock into smaller sized usable material is a mining operation.

### III

A legal identity report is required for newly established mines. Respondent took the affirmative step of registering its portable crusher "F.K.C. Portable" as a new mine with MSHA with the Federal mine identification number 26-02161. The same mine name and mine identity number appears on the citation at issue.

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Although filing with MSHA for a mine identity number does not confer jurisdiction, it strongly indicates that there can be no claim of lack of notice or surprise when the inspection was made and the citation issued.

ORDER AND DECISION ON JURISDICTION

Respondent's motion to dismiss this proceeding is DENIED. Petitioner's cross-motion for partial summary decision on the issue of jurisdiction is GRANTED.

The Secretary of Labor Mine Safety and Health Administration has jurisdiction.

August F. Cetti  
Administrative Law Judge

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