

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710
TELEPHONE: 202-434-9958 / FAX: 202-434-9949

JAN 16 2015

PARAMONT COAL CO. VIRGINIA,
LLC,

Contestant

v.

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

CONTEST PROCEEDING

Docket No. VA 2015-46-R
Safeguard No. 8213238; 05/14/2014

Mine: Deep Mine #26

ORDER OF DISMISSAL WITHOUT PREJUDICE

On or about November 12, 2014 Contestant Paramount Coal Company filed and served a Notice of Contest regarding Notice of Safeguard (“Safeguard”) No. 8213238 issued by the Secretary of Labor’s authorized representative on May 14, 2014. The Secretary filed a Motion to Dismiss, arguing that the Commission does not have jurisdiction over the Notice of Contest action, and therefore the Notice of Contest should be dismissed. Paramount contends that the Secretary’s argument is without merit and the Motion to Dismiss should be denied.¹

However, as a matter of judicial economy, I grant the Motion to Dismiss.²

Contest proceedings are initiated by filing a Notice of Contest pursuant to section 105(d) of the Mine Safety and Health Act of 1977 (“Act”) and Commission Procedural Rule 20. 30 U.S.C. § 815(d); 29 C.F.R. § 2700.20. A Notice of Contest does not place into issue any proposed penalty assessment that may subsequently be issued by the Secretary. 29 C.F.R. § 2700.21(a). Pursuant to section 105(a) of the Act, an operator may contest a proposed penalty assessment for a citation or order. “A contest of the proposed penalty assessment prompts the filing of a civil penalty proceeding and places into issue not only the proposed penalty, but the fact of violation and any special findings contained in the citation or order.” *Spartan Mining Company, Inc.*, 29 FMSHRC 99, 99 (Feb. 2007) (ALJ Zielinski); *Quinland Coals, Inc.*, 9 FMSHRC 1614, 1620-23 (Sept. 1987); 29 C.F.R. § 2700.21(b).

¹ Both parties recognized that there is a case currently pending before the Commission regarding the jurisdictional issue noted in the Secretary’s brief: *Pocahontas Coal Company, LLC*, Docket No. 2014-642-R et al.

² I decline to address the jurisdictional issue raised by the Secretary as I believe it is irrelevant to my decision to dismiss the contest case.

A contest of both the issuance of a citation and the subsequent proposed penalty assessment for the violation results in two separate proceedings before the Commission, which contain entirely duplicative issues. "There are two actions in the same forum, involving the same parties, and the same demand for relief. The contest proceeding no longer serves any useful purpose, practically or legally. As a general principle, duplicative litigation is to be avoided in the federal courts, as it undoubtedly is in other courts and adjudicative bodies." *Spartan Mining Company, Inc.*, 29 FMSHRC at 100; *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

Federal judges may stay or dismiss a suit that is duplicative of another federal court suit. *Curtis v. Citibank, N.A.*, 226 F.3rd 133, 138-39 (2d Cir. 2000). "Dismissal of contest cases, without prejudice, upon filing of the penalty proceeding would eliminate duplicative litigation, avoid reassignment and tracking problems, and result in more concise and efficient case and document captioning." *Spartan Mining Company, Inc.*, 29 FMSHRC at 100. Indeed, in a civil penalty proceeding involving a citation or order issued for a violation of a safeguard notice, the Secretary must first prove the validity of the underlying safeguard notice when challenged by the operator, and then prove the operator's violation of the safeguard notice. *See Southern Ohio Coal Co.*, 14 FMSHRC 1 (Jan. 1992). Therefore, as a matter of judicial economy, the contest case is hereby **DISMISSED WITHOUT PREJUDICE**.



L. Zane Gill
Administrative Law Judge

Distribution:

Robert S. Wilson, Esq. & Benjamin D. Chaykin, Esq., U. S. Dept. of Labor, 1100 Wilson Blvd.,
22nd Floor West, Arlington, VA 22209-2247

Meredith Kapushion, Jackson Kelly PLLC, 1099 18th St., Suite 2150, Denver, CO 80202