

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

May 28, 2003

LAFARGE BUILDING	:	CONTEST PROCEEDING
CHEMICAL CORPORATION,	:	
Contestant	:	Docket No. CENT 2003-173-RM
	:	Citation No. 6222293-03; 1/08/2003
v.	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, MSHA,	:	Tulsa Plant
Respondent	:	Mine ID 34-00026

ORDER OF DISMISSAL

Before: Judge Feldman

This contest case concerns Citation No. 6222293 issued on January 18, 2003, for an alleged violation of the mandatory safety standard in section 56.14105, 30 C.F.R. § 56.14105, governing the procedures for repair or maintenance of machinery or equipment. Citation No. 6222293 was issued because the mine operator’s personnel are required to obtain dust samples from a rotary kiln that rotates approximately 90 times per hour. In essence, the provisions of section 56.14105 require machinery or equipment to be turned off and blocked against hazardous motion prior to repair or maintenance unless motion or activation is necessary for adjustments or testing. In such instances, personnel must be protected from hazardous motion.

On May 2, 2003, the Secretary filed a Motion to Dismiss this contest matter because the Mine Safety and Health Administration (MSHA) vacated Citation No. 6222293 on February 3, 2003, because the “standard [in section 56.14105] is not applicable.” (*Addendum* vacating Citation No. 6222293, February 3, 2003). Gary Burch, the miners’ representative for Boilermakers Local D-421, opposes the Secretary’s decision to vacate the citation.

Without addressing the issue of Burch’s standing to challenge the Secretary’s action vacating the citation, this Commission has concluded the Secretary has unreviewable discretion to withdraw a citation charging a mine operator with a violation of her mandatory safety regulations. *RBK Construction, Inc.*, 15 FMSHRC 2099 (October 1993). Accordingly, the Secretary’s Motion to Dismiss the contest in Docket No. CENT 2003-173-RM **IS GRANTED** and this proceeding **IS DISMISSED**.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

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