

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 31, 2008

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2006-148-M
Petitioner	:	A.C. No. 40-03268-80642
	:	
v.	:	Docket No. SE 2006-163-M
	:	A.C. No. 40-03268-82949
SCP INVESTMENTS, LLC,	:	
Respondent	:	Old County Quarry

## ORDER TO SHOW CAUSE

These matters concern 12 citations that were issued as a result of an inspection of the Old County Quarry conducted by Mine Safety and Health Inspector (MSHA) Jeffrey Phillips on December 14, 2005. The cited violations have been corrected and the subject citations have been terminated.

The Old County Quarry is a rock crushing facility operated by SCP Investments, LLC ("SCP"). Pat Stone is the managing partner of SCP. According to Stone, the mine commenced operations in September 2005. Section 109(d) of the Federal Mine Safety and Health Act of 1977, as amended, ("Mine Act") requires a mine operator to file with the Secretary of Labor ("the Secretary") the name and address of the mine, as well as the name and address of the person who controls the mine. 30 U.S.C. § 819(d). Consistent with the statutory provisions of section 109(d), Part 41 of the Secretary's regulations requires mine operators to file a Legal Identity Report Form within 30 days of the opening of a new mine. 30 C.F.R. §§ 41.10, 41.11(a).

At the time of Phillips' inspection, SCP had not filed the required Legal Identity Report Form registering the facility as an active mine. Consequently, on December 14, 2005, Phillips ordered Stone to leave the mine property rather than allow Stone to accompany him during the mine inspection, reportedly because it was too dangerous given Stone's lack of Part 46 miner training. 30 C.F.R. Part 46. Stone, on behalf of SCP, objects to not being allowed to remain on mine property during the inspection.

Section 103(f) of the Mine Act provides, in pertinent part, “[s]ubject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany” an MSHA inspector during an inspection. 30 U.S.C. § 813(f). Thus, the right to accompany an inspector during an inspection is an important right that may only be curtailed by the Secretary’s regulations. *Consolidation Coal Co.*, 16 FMSHRC 713, 718 (Apr. 1994). Therefore, in extraordinary circumstances, the Secretary may preclude walkaround rights of miners’ representatives “where necessary to protect the safety of miners.” *Id.* at 719.

The Commission has rejected the failure to comply with MSHA filing requirements as a basis for denying section 103(f) “walkaround rights.” *Emery Mining Corporation*, 10 FMSHRC 276, 277 (Mar. 1988) (failure of a nonemployee miners’ representative to file identifying information required by 30 C.F.R. Part 40 does not permit an operator to refuse the representative entry to its mine for purposes of exercising section 103(f) walkaround rights). The Commission has also rejected the denial of walkaround rights based on an operator’s good faith reasonable belief that the area to be inspected was too dangerous to be entered. *Consolidation Coal*, 16 FMSHRC at 718-19.

In view of the above, **IT IS ORDERED** that the Secretary **SHOW CAUSE, in writing**, why the subject citations should not be vacated because MSHA’s mine inspection violated the provisions of section 103(f) of the Mine Act. Specifically, the Secretary should identify any regulation that identifies the circumstances that warrant the denial of a mine operator’s right to accompany an inspector. In addition, the Secretary should provide any Interpretive Bulletin or Memorandum addressing her implementation of the walkaround rights in section 103(f). The Secretary also should specify, by specific reference to her regulations, the requisite training that must be completed by a miners’ representative, or a mine operator, before he is allowed to be present during an inspection. Finally, the Secretary should identify, with specificity, the hazards that Stone would have been exposed to if he had accompanied Phillips on December 14, 2005, during this surface mine inspection. The Secretary may provide any additional information deemed appropriate.

**IT IS FURTHER ORDERED** that the Secretary’s response shall be filed within 21 days of this Order. If SCP Investments, LLC, wishes to respond to the Secretary, it should do so **within 14 days of receipt** of the Secretary’s response to this Order.

Jerold Feldman  
Administrative Law Judge  
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