

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3577/FAX 303-844-5268

March 15, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2000-231-M
Petitioner	:	A.C. No. 04-04785-05553
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	:	Docket No. WEST 2000-232-M
	:	A.C. No. 04-04785-05554
	:	
	:	Docket No. WEST 2000-239-M
v.	:	A.C. No. 04-04785-05555
	:	
	:	Docket No. WEST 2000-240-M
	:	A.C. No. 04-04785-05556
	:	
	:	Docket No. WEST 2000-241-M
	:	A.C. No. 04-04785-05557
	:	
MARIPOSA AGGREGATES,	:	Docket No. WEST 2000-520-M
Respondent	:	A.C. No. 04-04785-05560
	:	
	:	Docket No. WEST 2000-521-M
	:	A.C. No. 04-04785-05561
	:	
	:	Mariposa Aggregates Quarry

ORDER TO MARIPOSA AGGREGATES
TO SHOW CAUSE WHY ITS CONTEST OF THE CITATIONS, ORDERS,
AND PENALTIES AT ISSUE IN THESE CASES SHOULD NOT BE DISMISSED

These cases commenced when the Secretary of Labor filed petitions for assessment of civil penalty against Mariposa Aggregates under the authority of section 105(a) of the Federal Mine Safety and Health Act of 1977 (the "Mine Act"), 30 U.S.C § 815(a) and the Commission's Procedural Rules at 29 C.F.R. §§ 2700.25 & 2700.28. These petitions assessed penalties for the 107 citations and orders issued by MSHA against Mariposa Aggregates. In response, Mariposa Aggregates stated that it disputed the "purported claim of debt." It further stated that it "discharged and canceled [the 'erroneous purported debt'] in its entirety by operation of law, without dishonor, on the grounds of breach, false representation, and fraud..." It also raised jurisdictional issues. It implied that neither MSHA nor this Commission has jurisdiction over private property outside of the District of Columbia and U.S. Territories. Mariposa Aggregates raised other issues related to the Uniform Commercial Code, the Fair Debt Collection Practices

Act, and other statutes. Its response, however, did not deny the allegations contained in the citations, orders, or the penalty petitions. The Commission's Procedural Rules provide that an "answer shall include a short and plain statement responding to each allegation of the petition." 29 C.F.R. § 2700.29.

On January 19, 2001, the Secretary filed a motion for summary decision under the Commission's Procedural Rule at 29 C.F.R. § 2700.67. In the motion the Secretary states that there is no material issue of fact as to the jurisdictional issues raised by Mariposa Aggregates and that she is entitled to summary decision on the jurisdictional issues as a matter of law. The Secretary also maintains that, because Respondent did not deny the allegations set forth in the individual citations and orders, she is entitled to summary decision on the merits of these cases.

Mariposa Aggregates filed several documents in response to the Secretary's motion. In a document entitled "Notice of Return of Erroneous Presentments," Mariposa Aggregates denies that it owes the Secretary any money citing the requirements of the Uniform Commercial Code.

I also received a "Petition for Redress of Grievances" from Mariposa Aggregates. It is styled as a "Private International Administrative Remedy" brought against the undersigned, the Commission's Chief Administrative Law Judge and two employees of the Department of Labor. The document contains a series of "Statements of Fact." In these statements, Mariposa Aggregates maintains that its quarry is "within the boundaries of Mariposa County in the Republic of California" and the quarry is "outside the exclusive legislative jurisdiction of the United States." It also states that it "is not the operator of the quarry" and that there are no employees at the quarry. The document contains numerous other "statements of fact" relating to the UCC and previous correspondence with representatives of the Secretary.

By order issued on March 15, 2001, I held that, at all pertinent times, the Secretary had jurisdiction to conduct warrantless inspections of the Mariposa Aggregates quarry, to issue citations and orders for violations of her safety and health regulations, and to propose civil penalties for those violations.

In order to contest the merits of the citations, orders, and civil penalty amounts in these cases, Mariposa Aggregates was required to provide a "short and plain statement responding to each allegation of the petition." (29 C.F.R. § 2700.29). Mariposa Aggregates failed to comply with this requirement in these cases. None of the documents it submitted include such a "short and plain statement." Mariposa Aggregates only raised jurisdictional issues and numerous irrelevant arguments, which I rejected in my order of March 15 referred to above.

I cannot grant summary decision on the merits in these cases because the Secretary's motion is not supported by affidavits or other verified documents. The declarations attached to the motion do not reach the substantive issues. The Secretary's motion for summary decision is actually a motion, filed under 29 C.F.R. §§ 2700.10 and 2700.66, requesting that the contests filed by Mariposa Aggregates be dismissed. The Secretary is alleging that Mariposa Aggregates

did not comply with the Commission's Procedural Rules because it failed to answer the allegations contained in her petitions for penalty. In her motion, the Secretary states: "Not only has the Respondent failed to raise any legally-recognizable defenses or objections to either the citations themselves or the assessed penalties therefor, he has further stated in his Notice: 'I don't contest the citations.'" (Motion 10-11). The Secretary is referring to a document filed by Mariposa Aggregates entitled "Notice of Fraud; Notice: Certified Demand to Cease and Desist Collection Activities Prior to Validation of Purported Debt." The Commission construed this document as Mariposa Aggregates' answer in these cases. On the first page of this notice, Mr. Bevan states "I deny requesting a hearing before your commission."

Based on the above and the complete record in these cases, the Secretary's motion to dismiss Respondent's contests of the citations, orders, and proposed penalties appears to have merit. It is not at all clear that Mariposa Aggregates intended to contest the individual citations and orders. Under 29 C.F.R. § 2700.66(a), however, I am required to issue an order to show cause before dismissing a party's case.

Consequently, Mariposa Aggregates is **ORDERED TO SHOW CAUSE** on or before **April 20, 2001**, why its contest of the citations, orders, and proposed penalties in these cases should not be dismissed. To satisfy the requirements of this order, Mariposa Aggregates must state whether it contests the allegations set forth in the individual citations and orders. If it does intend to contest some or all of the citations and orders, it must set forth the facts upon which it is relying in its contest. That is, Mariposa Aggregates must specify the factual basis for its belief that the specific condition or practice described in each citation and order is incorrect. Its response need not be elaborate, but it must indicate its position on the allegations contained in each contested citation and order and the proposed penalty.

If Mariposa Aggregates fails to timely respond to this order or if its response does not address the conditions or practices alleged in the citations and orders, I will grant the Secretary's motion to dismiss Mariposa Aggregates' contest of the citations, orders, and penalties. In such case, I will affirm each citation and order and assess the proposed penalties.¹

Richard W. Manning
Administrative Law Judge

¹ On March 2, 2001, the Secretary filed a motion for clarification of Respondent's position and for leave to formally reply. In light of this order and my order granting the Secretary's motion for summary decision on the jurisdictional issues, the Secretary's motion is denied.

Distribution:

Jan Coplick, Esq., Office of the Solicitor, U.S. Department of Labor, 71 Stevenson St., Suite 1110, San Francisco, CA 94105-2999 (Certified Mail)

Wayne R. Bevan, President, Mariposa Aggregates, P.O. Box 942, Mariposa, CA 95338 (Certified Mail)

Wayne R. Bevan, President, Mariposa Aggregates, 3865 North Quail Summit Lane, Provo, UT 84604 (Certified Mail)

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