FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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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
	:	
	:	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 GRANTING SECRETARY OF LABOR'S MOTION FOR SUMMARY DECISION ON THE ISSUE OF JURISDICTION

These proceedings involve 107 citations and orders issued by the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) against Mariposa Aggregates at its quarry in Mariposa County, California. The Secretary proposes a total civil penalty of $108,067 for these 107 alleged violations.

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 proposed 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...." Mariposa

Aggregates also raised jurisdictional issues in its response. 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 any of the citations and orders. 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 documents in response to the Secretary's motion. One set of documents was received by my office on January 29, 2001. The primary document is entitled "Notice of Return of Erroneous Presentments." Attached to this document are the cover pages of the Secretary's motion and the attachments for the motion. Handwritten across each of these pages are the words, "Returned, Erroneous, January 25, 2001, Wayne R. Bevan." The Notice of Return of Erroneous Presentments states:

> I am returning your erroneous presentments WITHOUT DISHONOR, UCC 3-501. You have sent me incomplete instruments. UCC 3-115. These documents are returned timely, in according to all applicable rules.

This notice, signed by Wayne R. Bevan, makes additional references to the Uniform Commercial Code and demands that the Secretary provide "proof of your claim that you maintain a security interest, UCC 1-102(37)(A)."

My office 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. The document also contains a series of inquiries directed to these same individuals. For example, it asks whether the United States is a municipal corporation, whether California is a republic, and whether the persons to whom it is addressed are "willing participants in aiding or abetting in carrying out a deceptive, false and fraudulent scheme to extort contracts, signatures, funds and/or securities from the citizens of the several united States."

For the reasons set forth below, I find that the Secretary established that she is entitled to summary decision on the issues raised by Mariposa Aggregates, in accordance with 29 C.F.R. § 2700.67. A brief history of the Secretary's enforcement activity at the quarry is instructive. In 1995, MSHA inspectors attempted to inspect the Mariposa Aggregates quarry, but were denied entry. Later that year, the Secretary filed a Motion for Summary Judgment and Permanent Injunction with the United States District Court for the Eastern District of California. By order signed September 4, 1996, the District Court granted the Secretary's motion. The court rejected the arguments made by Mariposa Aggregates, which are substantially the same as the arguments here. (Declaration of Jan M. Coplick, Exhibit A). The court reviewed the evidence and determined that the Secretary established that MSHA had jurisdiction to inspect the quarry. The court permanently enjoined Mariposa Aggregates "from interfering in any way with the Secretary of Labor or his authorized representatives in carrying out any of the provisions of the Act...." *Id. at* 21. The court stated that Mariposa's arguments were "without merit," were "frivolous," were made in "bad faith." *Id. at* 15 and 18. Mariposa Aggregates is collaterally estopped from relitigating the same issues in these proceedings.

I also find that the Secretary established that MSHA has jurisdiction at the quarry without reference to the District Court decision. The Secretary's motion is supported by the declaration of Jaime A. Alvarez, a duly authorized representative of the Secretary with personal knowledge of the subject quarry and MSHA's inspections of the quarry. He stated that the mine was operating at the time of the inspections. He observed at least four individuals engaged in mining activities that are typical for this type of quarry. He also observed that the crusher and mill were operating. When Wayne R Bevan, President of Mariposa Aggregates, was notified that MSHA inspectors were on the property, he ordered that all operations be shut down and that everyone working at the facility go home. The MSHA inspectors were advised that the people working at the mine were not employees, under an agreement entered into between them and the mine. Mr. Bevan told Mr. Alvarez that MSHA did not have jurisdiction because his operation was in the "Republic of California" and it did not have any employees.

Mr. Alvarez stated that whenever MSHA attempted to inspect the quarry, Mr. Bevan ordered all operations to cease and the workers were sent home. Mr. Alvarez was attempting to conduct a silica dust survey, but he could not do so unless the facility continued operating. By shutting down the quarry whenever MSHA inspectors arrived, Mr. Belvan violated the terms of the 1966 District Court decision. Mr. Alvarez also stated that he has been informed that the quarry has "subsequently been shut down by the state and local governments for its refusal to comply with such laws and with orders of state court judges." (Alvarez Declaration at 9). Finally, he states that at the time the disputed citations and orders were issued, "Respondent was actively operating his mine...." *Id.* Mariposa Aggregates did not offer any evidence in opposition to the declarations of Mr. Alvarez or of Ms. Coplick. Consequently, I find that there is no genuine issue of material fact with respect to the issues raised by Mariposa Aggregates.

It appears that, as part of its argument, Mariposa Aggregates contends that the quarry is outside the exclusive legislative jurisdiction of the United States. This argument is flawed. The Secretary is not claiming exclusive jurisdiction. Article I, Section 8, Clause 17 of the United

States Constitution provides a mechanism for the federal government to exercise exclusive legislative jurisdiction over the District of Columbia and, with the consent of the state legislature, specified lands within a state. The Secretary is not asserting that she has exclusive jurisdiction under the Constitution or any statute.

The Secretary was granted nonexclusive jurisdiction over mines located on private property under the commerce clause of the Constitution: Article I, Section 8, Clause 3. That provision states that "Congress shall have power to ... regulate commerce with foreign nations, and among the several states, and with the Indian Tribes...." As stated in section 4 of the Mine Act, the Mine Act was enacted under the authority of the commerce clause. Since the early 1940s, the commerce clause has been interpreted very broadly by the Supreme Court and the inferior courts. For example, in *Wickard v. Filburn*, 317 U.S. 111, 125 (1942), the Supreme Court held that the federal government's power to regulate private economic activities under the commerce clause is not confined to the regulation of commerce between the states, but extends to a local activity if "it exerts a substantial economic effect on interstate commerce...." "Even activity that is purely intrastate in character may be regulated by Congress, where the activity, combined with like conduct by others similarly situated, affects commerce among the States...." *Fry v. United States*, 421 U.S. 542, 547 (1975).

Congress and the courts have determined that mines, including quarries, exert a substantial economic effect on interstate commerce. In *Donovan v. Dewey*, 452 U.S. 594, 602 (1981), the Supreme Court stated:

> As an initial matter, it is undisputed that there is a substantial federal interest in improving the health and safety conditions in the nation's underground and surface mines. In enacting the statute, Congress was plainly aware that the mining industry is among the most hazardous in the country and that the poor health and safety record of this industry has significant deleterious effects on interstate commerce.

The Court relied upon the legislative history and the preamble to the Mine Act in reaching this conclusion. The Court determined that MSHA had the authority to conduct a warrantless inspection of a stone quarry that was located on private property in Wisconsin.

The federal courts have uniformly recognized MSHA's authority to inspect mines under the commerce clause. For example, in *U.S. v. Lake*, 985 F3d 265, 268 (6th Cir. 1993), the court of appeals held that "the language of the [Mine] Act, its broad remedial purpose, and its legislative history combine to convince us that Congress intended to exercise its full power under the Commerce Clause."

I also reject the arguments made by Mariposa Aggregates under the Uniform Commercial Code, the law of commercial transactions, and the laws governing the relationship between debtors and creditors. Those statutes are not relevant in these cases. All other arguments

presented by Mariposa Aggregates in these cases are similarly rejected. These arguments have no merit because they are frivolous and do not relate to the issues presented in these cases.

I find that, at all pertinent times, Respondent's quarry in Mariposa County, California, was a mine and that its operations affect commerce. A coal or other mine is defined in section 3(h)(1) as "(A) an area of land from which minerals are extracted ..., (B) private ways and roads appurtenant to such area, and (C) lands, excavations, ... structures, facilities, equipment, machines, tools, or other property ... on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits, ... or used in, or to be used in, the milling of such minerals...." 30 U.S.C. § 802(h)(1). The quarry clearly fits within this definition.

Section 4 of the Mine Act, entitled "Mines Subject to Act," provides that "[e]ach coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this Act." 30 U.S.C. § 803. The record demonstrates that the quarry affects interstate commerce. I conclude that the Secretary established the quarry is subject to the provisions of the Mine Act and that she is entitled to summary decision as a matter of law. I hold that, at all pertinent times, the Secretary had the authority to conduct warrantless inspections of the quarry, to issue citations and orders for violations of her safety and health regulations, and to propose civil penalties for those violations.[1]

Richard W. Manning
Administrative Law Judge

Distribution:

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[1] As stated above, the Secretary's motion also seeks summary decision on the merits of these cases. She states that the answers and other documents filed by Mariposa Aggregates do not challenge the individual citations, orders, or penalties at issue. On this date, I am issuing an order requiring Mariposa Aggregates to show cause why all of the citations, orders, and civil penalties at issue in these proceedings should not be affirmed. That order addressed the issues raised by the Secretary's motion with respect to the merits of these cases.