

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 Skyline, Suite 1000
5203 Leesburg Pike
Falls Church, Virginia 22041

August 16, 2001

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| SECRETARY OF LABOR, | : | CIVIL PENALTY PROCEEDINGS |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | Docket No. WEST 2000-306-M |
| Petitioner | : | A. C. No. 45-03212-05518 |
| v. | : | |
| | : | Docket No. WEST 2000-307-M |
| HARD ROCK MINING COMPANY | : | A.C. No. 45-03212-05519 |
| OF OLYMPIA, INC., | : | |
| Respondent | : | Docket No. WEST 2000-308-M |
| | : | A.C. No. 45-03212-05520 |
| | : | |
| | : | Docket No. WEST 2000-458-M |
| | : | A.C. No. 45-03212-05521 |
| | : | |
| | : | Docket No. WEST 2000-500-M |
| | : | A.C. No. 45-03212-05522 |
| | : | |
| | : | Docket No. WEST 2000-577-M |
| | : | A.C. No. 45-03212-05523 |
| | : | |
| | : | Hard Rock Pit |

ORDER LIFTING STAY
DEFAULT DECISION

Before: Judge Hodgdon

These cases are before me on Petitions for Assessment of Civil Penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). Proceedings in the cases are currently stayed.¹ The petitions allege 42 violations of the Secretary’s health and safety standards and seek penalties of \$35,314.00. For the reasons set forth below, I find that the company is in default, affirm the citations and orders and assess penalties of \$35,314.00.

¹ Docket Nos. WEST 2000-306-M, WEST 2000-307-M and WEST 2000-308-M have been on stay since August 23, 2000. Docket No. WEST 2000-458-M has been on stay since August 24, 2000. Docket No. WEST 2000-500-M has been on stay since October 20, 2000, and Docket No. WEST 2000-577-M has been stayed since March 27, 2001.

On July 2, 2001, counsel for the Secretary filed a motion requesting that the stays be lifted and the cases set for hearing. In his motion, however, counsel noted that he had not been able to contact the Respondent by telephone and that the last letter he sent to the Respondent by certified mail was returned “unclaimed.” Attempts by this office to set up a telephone conference call for the purpose of setting a hearing date met with the same results.

Permission was granted for Respondent’s counsel to withdraw from the case on October 20, 2000. A copy of the order granting permission was sent to David F. Lapp, President, Hard Rock Mining Co., at the company’s address of record and a green, “return receipt” card signed by what appears to be a “Karla Davis” was received back. Since that time, however, no return receipt cards have been received back from mail sent to the Hard Rock address of record. In addition, counsel for the Secretary stated in a December 28, 2000, pleading that he had been advised by Hard Rock’s former counsel that both Lapp and the company had filed for bankruptcy. On the other hand, the March 27, 2001, order canceling the hearing and staying the proceedings in Docket No. WEST 2000-577-M was sent to Rosemary M. Short, Bookkeeper, Hard Rock Mining Co., in Tumwater, Washington, and the return receipt card, signed by “D. Lapp,” was received back.²

Concluding that Hard Rock had not kept either the Commission or the Secretary apprized of its status,³ that it was not clear what the company’s position was with regard to these proceedings, or even if the company still existed,⁴ I issued an Order to Show Cause to the company on July 11, 2001. The order ordered Hard Rock to show cause why it should not be held in default in these proceedings and ordered to pay penalties in the amount of \$35,314.00 for failure to prosecute its case.

The order was sent to the company’s two addresses of record by both certified mail-return receipt requested and regular mail and required a response within 21 days of its date. It provided that Hard Rock could respond to the order by furnishing both the Secretary and the Commission with an address and a telephone number at which it could be contacted. It further stated that:

² This address was provided by the company in response to a telephone inquiry from this office.

³ Commission Rule 5(c), 29 C.F.R. § 2700.5(c), requires, among other things, that: “Written notice of any change in address or telephone number shall be given promptly to the Commission or the Judge and all other parties.”

⁴ Telephone inquiries by this office seeking a telephone number for the company in both Olympia and Tumwater were met with the statement that there was no listing for the company.

“Failure to respond to this order will result in the company being held in default and ordered to pay the \$35,314.00 in proposed penalties in these cases.” To date, no response has been received.⁵

Order

Based on these facts, I conclude that the Respondent is in **DEFAULT** in these matters. Accordingly, the stays are **LIFTED**, all of the orders and citations in these dockets are **AFFIRMED** and Hard Rock Mining Company of Olympia, Inc., is **ORDERED TO PAY** civil penalties of **\$35,314.00** within 30 days of the date of this decision.

T. Todd Hodgdon
Administrative Law Judge

Distribution: (Certified Mail) (Regular Mail)

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David F. Lapp, President, Hard Rock Mining Company, 10145 Littlerock Road SW, Olympia, WA 98512

Rosemary M. Short, Bookkeeper, Hard Rock Mining Company, 2827 29th Avenue SW, Tumwater, WA 98512

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⁵ Both orders sent to Rosemary M. Short, Bookkeeper, Hard Rock Mining Co., 2827 29th Avenue SW, Tumwater, WA 98512, were returned marked “Undeliverable as addressed” and “No forward order on file.” The certified order sent to David F. Lapp, President, Hard Rock Mining Company, 10145 Littlepage Road SW, Olympia, WA 98512, was returned marked “Unclaimed” after three attempts were made by the Postal Service to deliver it.