

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 11, 2001

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 TO SHOW CAUSE

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 Secretary has now filed a motion requesting that the stays be lifted and the cases set for hearing. In his motion, however, counsel for the Secretary notes that he has 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 have met with the same results.

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.

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. 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

At a minimum, Hard Rock has not complied with Commission Rule 5(c), 29 C.F.R. § 2700.5(c), which 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." 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.

Since Hard Rock has not kept either the Commission or the Secretary apprized of its status, it is not clear what the company's position is with regard to these proceedings, or even if the company still exists.³ Accordingly, Hard Rock Mining Company of Olympia, Inc., is **ORDERED TO SHOW CAUSE**, within **21 days** of the date of this order, 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 cases. Hard Rock may respond to this order by providing both the Secretary and the Commission with an address and a telephone number at which it can be contacted. **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.**

T. Todd Hodgdon
Administrative Law Judge
(703) 756-6213

² This address was not provided by the company.

³ 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.

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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