FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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September 7, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2000-559-M
Petitioner	:	A. C. No. 48-00837-05508
	:	
	:	Docket No. WEST 2000-573-M
	:	A. C. No. 48-00837-05509
v.	:	
	:	Docket No. WEST 2000-574-M
	:	A. C. No. 48-00837-05510
RIO ALGOM MINING CORPORATION,	:	
Respondent	:	Docket No. WEST 2000-575-M
	:	A. C. No. 48-00837-05511
	:	
	:	Smith Ranch Project
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2000-537-M
Petitioner	:	A. C. No. 48-00837-05501 N5Y
v.	:	
	:	Docket No. WEST 2000-538-M
PRONGHORN DRILLING COMPANY,	:	A. C. No. 48-00837-05502 N5Y
Respondent	:	
	:	Smith Ranch Project

SUMMARY DECISION

Appearances: Ann M. Noble, Esq., U.S. Department of Labor, Denver, Colorado, on behalf of Petitioner;
Katherine Shand Larkin, Esq., Jackson & Kelly, PLLC, Denver, Colorado, on behalf of Respondent, Rio Algom Mining Corp.;
Sean P. Durrant, Esq., Palmerlee & Durrant, Buffalo, Wyoming, on behalf of Respondent, Pronghorn Drilling Company.

Before: Judge Melick

These cases are before me upon Petitions for Civil Penalty filed by the Secretary of Labor pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.* (1994), the "Act," charging Respondents Rio Algom Mining Corp. (Rio Algom) and Pronghorn Drilling Company (Pronghorn) with violations of mandatory standards at the Smith Ranch *in-situ* uranium recovery operation in Douglas, Wyoming. Respondent, Pronghorn, on April 11, 2001, and Rio Algom, on April 12, 2001, filed separate motions for summary decision asserting that the Secretary is without jurisdiction in this matter and that they are entitled to summary decision vacating all of the citations at bar. Their arguments are based on claims that the Smith Ranch Project is not a "mine" within the meaning of the Act. On April 12, 2001, the Secretary filed her own motion for partial summary decision asserting that she has jurisdiction under the Act to proceed against both Rio Algom, the owner and operator of the Smith Ranch Project, and independent contractor Pronghorn.

Under Commission Rule 67, 29 C.F.R. § 2700.67, a motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows: (1) that there is no genuine issue as to any material facts; and (2) that the moving party is entitled to summary decision as a matter of law.
For the reasons that follow I find that Respondents are entitled to summary decision as a matter of law.

Whether the "Smith Ranch Project" is a "mine" depends on whether it meets the definition set forth in Section 3(h)(1) of the Act. Section 3(h)(1) provides as follows:

> "Coal or other mine" means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, 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 in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this Act, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment.

In connection with their motions for summary decision the parties have reached joint stipulations on the jurisdictional issue and more particularly regarding the processes and activities involved in uranium recovery at the Smith Ranch Project. The process utilized at the Smith Ranch Project is described in an article entitled, "The Smith Ranch Uranium Project" published in the Uranium Institute Twenty Second Annual International Symposium 1997, and authored by R. Mark Stout and Dennis E. Stover (SJ Exhibit No. 2). For purposes of this decision however, it is sufficient to note, and it is undisputed, that the mineral here at issue, *i.e.*, uranium, is extracted in liquid form without any workers underground.

As previously noted, Section 3(h)(1)(A) of the Act defines "coal or other mine" as "[a]n area of land from which minerals are extracted in nonliquid form or, *if in liquid form, are extracted with workers underground*." (emphasis added). It is therefore beyond dispute that the Smith Ranch Project at issue herein is not a "mine" within the meaning of Section 3(h)(1)(A) of the Act.

The Secretary nevertheless argues that Rio Algom's processing of this mineral, which has been extracted in liquid form without workers underground, is covered under Section 3(h)(1)(C) of the Act as "the milling of such minerals." "Coal or other mine" is there defined to also include ". . . structures, facilities, equipment, machines, tools, or other property, . . . used in, or to be used in, or resulting from , the work of extracting such minerals from their natural deposits in nonliquid form, or, if in liquid form, with workers underground, *or used in, or to be used in, the milling of such minerals* . . ." (emphasis added).

It is well established that "[w]hen the meaning of the language of a statute or regulation is plain, the statute or regulation must be interpreted according to its terms, the ordinary meaning of its words prevails." *W. Fuels-Utah, Inc.,* 11 FMSHRC 278, 283 (Mar. 1989). If it is plain on its face, effect should be given to its clear meaning. *Exportal Ltda. v. United States,* 902 F.2d 45, 50 (D.C. Cir. 1990).

Under the clear and plain language of Section 3(h)(1)(C) those milling operations covered under the Act are only those involving the milling of "such minerals," *i.e.*, "minerals extracted from their natural deposits in nonliquid form, or if in liquid form, with workers underground." Clearly when the adjective "such" is used to modify the noun "minerals" it qualifies the word "minerals" limiting it to only those minerals previously qualified in the statute, *i.e.,* only those minerals extracted from their natural deposits in nonliquid form, or if in liquid form, with workers underground.

The adjective "such" sometimes serves a useful purpose, as where it saves having to repeat a concept that cannot be referred to in a word or two. In statutes and regulations, for example, it may be necessary to make clear that the second reference is exactly the same concept mentioned previously. The word "such" is the simplest way to do so. *See People v. Jones,* 46 Cal 3d 585, 250 Cal Rptr 635, 759 P2d 1165 (1988). The legislative history is also consistent with this construction. As that history reflects, the definition of mining was intended to

encompass the milling process, but only those milling operations "related" to minerals defined by and incorporated into the Act's provisions.

Within this framework of law it is clear that the operations here at issue, whether or not they constitute "milling" within the meaning of the Act, are excluded from coverage under the Act and the Secretary has no jurisdiction in these proceedings.[1] Accordingly all citations herein must be vacated and these civil penalty proceedings dismissed.

ORDER

Docket Numbers WEST 2000-537-M, WEST 2000-538-M, WEST 2000-559-M, WEST 2000-573-M, WEST 2000-574-M and WEST 2000-575-M, are hereby dismissed and all citations therein vacated.

Gary Melick
Administrative Law Judge

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[1] Under the circumstances it is not necessary to determine whether such operations constitute "milling" within the meaning of the Act and supplemental briefing on this issue is, of course, no longer necessary.