

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

September 9, 2002

BECON CONSTRUCTION, INC., Contestant	:	CONTEST PROCEEDING
	:	
v.	:	Docket No. WEST 2001-204-RM Citation No. 7994802; 01/02/2001
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH, ADMINISTRATION, MSHA Respondent	:	Lebec Cement Plant Mine ID 04-00213 AF6
	:	
MORTON ENGINEERING AND CONTRACTING, INC., Contestant	:	CONTEST PROCEEDING
	:	
v.	:	Docket No. WEST 2001-226-RM Citation No. 7994802; 01/02/2001
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH, ADMINISTRATION, MSHA Respondent	:	Lebec Cement Plant Mine ID 04-00213 8FQ
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH, ADMINISTRATION, MSHA Petitioner	:	CIVIL PENALTY PROCEEDING
	:	
v.	:	Docket No. WEST 2002-147-M A.C. No. 04-00213-05 502 AF6
	:	
BECON CONSTRUCTION COMPANY, Respondent	:	Lebec Cement Plant
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH, ADMINISTRATION, MSHA	:	CIVIL PENALTY PROCEEDING
	:	
v.	:	Docket No. WEST 2002-164-M A.C. No. 04-00213-05 504 8FQ
	:	
MORTON ENGINEERING & CONSTRUCTION, INC., Respondent	:	Lebec Cement Plant
	:	

ORDER DENYING AUTOMATIC STAY

These consolidated contest and civil penalty proceedings have been stayed to permit the parties to complete discovery on or before October 8, 2002. The parties have agreed that November 19, 2002, is a satisfactory hearing date.

On August 15, 2002, Morton Engineering & Construction, Inc.(Morton), citing 11 U.S.C. § 362, filed a motion for an automatic stay because of its voluntary bankruptcy petition filed under Chapter 11 of the Bankruptcy Act. The Secretary opposed Morton's motion on August 27, 2002.

As noted by the Secretary, although 11 U.S.C. § 362(a) provides that the filing of a bankruptcy petition under 11 U.S.C. § 301 operates as an automatic stay of specified proceedings against a bankruptcy petitioner, section 362(b)(4) of the Bankruptcy Act exempts the continuation of a proceeding involving governmental regulatory enforcement from the automatic stay provisions. The Mine Safety and Health Administration (MSHA), the petitioner in the instant proceedings brought pursuant to the regulatory powers delegated to it under the Federal Mine Safety and Health Act, 30 U.S.C. § 801 et seq. (1994), is a "governmental unit" as defined by section 101(27) of the Bankruptcy Act, 11 U.S.C. § 101(27).

Consistent with the above statutory analysis, this Commission has consistently held that MSHA proceedings are not subject to the automatic stay bankruptcy provisions of section 362. *Sec'y of Labor o/b/o Michael L. Price and Joe John Vacha v. Jim Walter Resources, Inc.*, 12 FMSHRC 1521, 1528-30 (August 1990); *Sec'y v. L. Kenneth Teel*, 13 FMSHRC 1915, 1916-17 (December 1991) (ALJ). Accordingly, Morton Engineering & Construction, Inc.'s motion for an indefinite automatic stay as a consequence of its bankruptcy filing **IS DENIED**. Although the stay of these matters shall continue to permit completion of discovery, the anticipated hearing date of November 19, 2002, remains in effect.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

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