FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3577/FAX 303-844-5268

March 5, 2003

THOMAS P. DYE II, Complainant	:	DISCRIMINATION PROCEEDING
	:	Docket No. WEST 2002-408-DM
	:	RM MD 02-11
v.	:	
	:	Mine I.D. 05-01732
	:	Cotter Mill
MINERAL RECOVERY SPECIALISTS, INC., Respondent	:	

ORDER REVOKING SUBPOENA ISSUED TO COTTER CORPORATION

This proceeding was brought by Thomas P. Dye against Mineral Recovery Specialists, Inc., ("MRSI") under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. ("Mine Act") and 29 C.F.R.§ 2700.40 et seq. The complaint alleges, in part, that MRSI violated section 105(c) of the Mine Act when it terminated Dye as a temporary full-time employee because he insisted that a recently repaired piece of equipment be fully safety-tested before it was put back into service. MRSI denies the allegations in the complaint.

Mr. Dye filed a motion for issuance of a subpoena to produce documents under the custody and control of Cotter Corporation ("Cotter"). Cotter Corporation owns and operates the Cotter Mill in Fremont County, Colorado. MRSI provided certain engineering and oversight services to CMS Enterprises, LLC ("CMS") for the zirconium and uranium recovery process being developed by CMS at the Cotter Mill. In his motion for issuance of a subpoena, Mr. Dye alleged that he needed these documents for the preparation of his case in this proceeding. I mailed a subpoena to produce document or object to Mr. Dye on January 7, 2003. Cotter is not a party in this proceeding.

In response, Cotter filed a motion to revoke the subpoena under 29 C.F.R. § 2700.60(c). Cotter states that the subpoena is overly broad, exceedingly vague, and is unduly burdensome. Cotter states that the subpoena seeks information that is outside the proper scope of discovery because the information would neither be relevant to this case nor would it lead to the discovery of relevant evidence. In addition, Cotter states that the subpoena seeks the disclosure of information that is of a proprietary nature and protected by Colorado's Uniform Trade Secrets Act.

The hearing on the merits in this case was held on March 4, 2003. About a week prior to the hearing, during a phone conversation with Mr. Dye, I advised him that if I enforced his subpoena, the hearing would have to be postponed to give Cotter time to comply with the

subpoena. Mr. Dye advised me that, although he would like the documents he requested, he did not want to postpone the hearing. Although Mr. Dye did not specifically state that he was withdrawing his subpoena, the subpoena is now effectively moot because the evidentiary hearing has been completed and the record in this case is closed.

In addition, for the reasons stated below, I find that the documents requested are not relevant to this case and searching for them would place an unreasonable burden on Cotter. In the subpoena, Mr. Dye requested the following documents:

1. Copies of all training certificates on file for MRSI.
2. Copies of all incident, accident, and security reports which involve any workers employed by MRSI.
3. Copies of operation areas logbooks relating to sulfation, CCDs, and the Kiln from August 1, 2000, to August 16, 2002.
4. Copies of all shifters' logbooks from August 1, 2000, to August 16, 2002, that involve MRSI or its employees.
5. Copies of all mechanics' logbooks and records in relation to repairs, construction, engineering changes, commissioning and decommissioning of the zirconium project from August 1, 2000, to August 16, 2002.
6. Copies of mill foremen's logbooks from August 1, 2000, to August 16, 2002.

Cotter maintains that the subpoena is unduly burdensome because it would require Cotter to review thousands of pages of documents. Cotter also filed specific objections to each of the document requests. I agree that the subpoena is overly broad and I find that the subpoena is highly unlikely to uncover evidence that would be relevant to this proceeding. Mr. Dye was seeking the documents because of his belief that they would "reveal numerous incidents that involve Mr. Dilday and a lack of incidents involving Mr. Dye." Dye contends that he was a safer employee than Dan Dilday, MRSI's project manager at the Cotter Mill. As I advised the parties at the March 4 hearing, the issue in this case is whether Mr. Dye engaged in protected activity and whether he was terminated as a result of this protected activity. Whether Mr. Dilday had been involved in "numerous incidents" is not particularly relevant.

Dye also sought the documents to show that MRSI employees were not sufficiently task-trained and to "reveal the incompetent orders given by Mr. Dilday of MRSI, many of which resulted in failed pumps, spills, and unsafe incidents." Dye did not know if any of the requested documents would uncover such evidence but he wanted to review them to see if they did. Mr. Dye and his witnesses testified about Mr. Dilday's "incompetent orders" at the hearing and MRSI's witnesses responded to this testimony. The testimony on this subject was not relevant to the issues in this case. I find that the documents that Mr. Dye requested in the subpoena were unlikely to be admissible evidence and would not have led to the discovery of admissible evidence.

For the reasons set forth above, the motion to revoke the subpoena issued to Cotter Corporation is **GRANTED** and the subpoena is **REVOKED**.

Richard W. Manning
Administrative Law Judge

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RWM