

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, Suite 1000
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

May 22, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 99-353-M
Petitioner	:	A. C. No. 45-03334-05508
v.	:	
	:	
NORTHWEST AGGREGATES,	:	DuPont Pit
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2000-481-M
Petitioner	:	A. C. No. 45-03334-05518 A
v.	:	
	:	
RICHARD INWARDS, employed by,	:	
NORTHWEST AGGREGATES,	:	DuPont Pit
d/b/a, GLACIER NORTHWEST,	:	
Respondent	:	

ORDER DENYING RESPONDENTS' MOTION TO DISMISS

Respondents, Northwest Aggregates and Richard Inwards, have moved to dismiss the petitions for assessment of civil penalties filed against them and as grounds therefore, assert that the settlement and dismissal of a petition against another individual that had been based upon the same underlying citations warrants dismissal of the petitions against them. Respondents' motion is based upon an erroneous factual predicate and does not otherwise establish grounds to dismiss the petitions. Accordingly, the motion is denied.

The instant proceedings were initiated on September 7, 1999, by the filing of a petition for assessment of civil penalties against Northwest Aggregates. The petition was based upon two citations alleging violations of safety and health standards that had been issued on February 11, 1999. Subsequently, following an investigation, petitions were also filed against two individual Respondents, Richard Inwards and Mark Snyder, pursuant to § 110(c) of the Mine Safety and Health Act of 1977. 30 U.S.C. § 820(c). Those petitions were also based upon the February 11, 1999 citations. Mark Snyder was the work-site foreman and Richard Inwards was the plant superintendent at the time of the alleged violations. The petitions against the individual respondents alleged that they were agents of Northwest Aggregates.

The Secretary subsequently moved to vacate the petition filed against Snyder. The

motion was styled “Joint Motion to Approve Settlement” and represented that the Secretary had agreed to “vacate the Petition for Assessment of Civil Penalty against Mark Snyder. This vacation is based on subsequent interviews and statements of miners employed by the above-referenced mine.” Motion, at p. 2. On March 7, 2001, an Order of Dismissal” was entered in that case. The Order stated:

The Secretary has filed a motion to approve settlement. However, the grounds for the motion are that the Secretary has agreed to vacate the two citations at issue in this case. The Secretary has the discretion to vacate the subject citations, prompting dismissal of this case.

Respondents argue that since there has never been any contention by the Secretary that Snyder was not an agent of Northwest Aggregates or that he had not acted knowingly when carrying out his duties, the vacating of the citations as to Snyder indicates that the citations “lacked substantive merit . . . [and] must also be vacated against Respondents Inwards and Northwest Aggregates.” Motion to Dismiss, at p. 4. The factual premise for this argument is that the Order of Dismissal is a final order of the Commission “that the two citations at issue are **vacated**” (*Id.* at p. 6), thereby establishing the lack of substantive merit of the citations for these cases.

The Order of Dismissal erroneously stated that the Secretary had agreed to vacate the *citations* rather than the petition against Snyder. In fact, the citations have never been vacated and the Order did not purport to vacate them. It merely dismissed the “case”, i.e., the petition for assessment of civil penalties that had been filed against Snyder. The dismissal was based upon the Secretary’s determination not to prosecute the petition for civil penalties against Snyder. The Secretary has unreviewable discretion to make such determinations. *Bixler Mining Co.*, 16 FMSHRC 1427 (July 1994); *RBK Constr., Inc.*, 15 FMSHRC 2099 (Oct. 1993). She can do so for any reason or no reason at all. There is no inference that can be drawn from the Secretary’s decision not to prosecute a case against Snyder.

While the reasons underlying the Secretary’s determination are not normally discoverable, the Secretary has represented in her opposition to the motion that through interviews with other witnesses it was determined that Snyder had been placed in “an impossible position” such that he should not be held individually liable. Rightly or wrongly, the Secretary’s asserted reason for deciding not to proceed against Snyder does not implicate the validity of the underlying citations as to Respondents Northwest Aggregates and Inwards.

Based upon the foregoing, Respondents’ Motion to Dismiss is **Denied**.

Michael E. Zielinski
Administrative Law Judge

Distribution:

Deia W. Peters, Esq., Office of the Solicitor, U.S. Department of Labor, 1111 Third Avenue, Suite 945, Seattle, WA 98101-3212 (Certified Mail)

John M. Payne, Esq., Davis, Grimm & Payne, Marra & Berry, 1111 Third Avenue, Suite 1865, Seattle, WA 98101 (Certified Mail)

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