

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	SMA Docket No. 04-0001
)	
Aysen Bros., Inc., Blanchard Farms, Inc., Patrick)	
Richard Farms, D &R Blanchard Farms, Inc., John)	
Goode Farms, Claude Bros., Inc., SJM Farms, Inc.,)	
Boudreaux Enterprise RJB, LLC)	
)	
AND)	
)	
Rene Clause & Sons, Inc., and A. N. Simmons)	SMA Docket No. 04-0002
Estate)	
)	
Petitioners)	Order Dismissing Petitions and Claims By Intervenors

BACKGROUND

These proceedings are pursuant to the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Adjustment Act of 2002, as they pertain to the establishment and transfer of flexible marketing allotments for sugar. (7 U.S.C. §§1359aa-1359kk, "the Act"). The sugar loan and allotment program is administered by the United States Department of Agriculture's Commodity Credit Corporation (CCC). In addition to making loans to processors of domestically grown sugarcane and domestically grown sugar beets who must then pay growers of these commodities not less than minimum amounts that are established by the Department of Agriculture, (*See* 7 C.F.R. §§1435.100-1435.106), CCC establishes flexible marketing allotments for sugar for any crop year in which they are required by the Act. Under a formula expressed in the Act, limitations are placed on the percentage of the American Sugar

Market that may be supplied by foreign growers and the rest is divided between sugar derived from domestically grown sugar beets and sugar from domestically grown sugarcane. Additionally, the allotments for sugar derived from sugarcane is further allotted among the States in accordance with the Act and implementing regulations. An allotment for cane sugar is allocated among multiple cane sugar processors in the State of Louisiana, (which is the only proportionate share State subject to 7 U.S.C. §1359d(b)(1)(D)), on the basis of past marketings and processings of sugar, and the processor's ability to market its portion of the allotment allocated for the crop year. The Act further requires that a processor's allocation of an allotment shall be shared among growers served by the processor in a fair and equitable manner that reflects the growers' production histories. Louisiana is the only State in which growers have assigned allotments. When a processing facility is closed in Louisiana, sugarcane growers that delivered sugarcane to the facility prior to the closing may elect to deliver their sugarcane to another processing plant by filing a petition under 7 U.S.C. §1359ff (c)(8)(A) to have their allocations modified to allow the delivery. Upon the filing of such a petition, CCC may increase the allocation of the processing facility to which the growers have elected to deliver their sugarcane to a level that does not exceed that company's processing capacity, and the increased allocation is then deducted from the allocation of the owner of the closed processing facility. (7 U.S.C. §1359ff(c)(8)(B) and (C)).

The Petitioners are Louisiana growers of sugarcane and members of the South Louisiana Sugar Cooperative (the Cooperative). Each Petitioner had entered into an agreement to supply all of their sugarcane production to the Cooperative. When the Petitioners entered into these agreements, the Cooperative was operating a sugarcane processing facility known as the

Glenwood Cooperative Sugar Mill at Napoleon, Louisiana to which Petitioners delivered their sugarcane for processing. However, for economic reasons, the Cooperative closed this facility. After the closure, these growers petitioned the Secretary, pursuant to 7 U.S.C. §1359ff(c)(8)(A), to move their respective sugar marketing allocations, commensurate with their sugarcane production histories at the closed facility, to other sugarcane processors who agreed to accept their sugarcane. The pertinent provisions of the Act (7 U.S.C. §1359ff(c)(8)) are as follows:

(8) PROCESSING FACILITY CLOSURES –

(A) IN GENERAL – If a sugarcane processing facility subject to this subsection is closed and the sugarcane growers that delivered the sugarcane to the facility prior to the closure elect to deliver their sugarcane to another processing company, the growers may petition the Secretary to modify allocations under this part to allow the delivery.

(B) INCREASED ALLOCATION FOR PROCESSING COMPANY – The Secretary may increase the allocation to the processing company to which the growers elect to deliver the sugarcane, with the approval of the processing company, to a level that does not exceed the processing capacity of the processing company, to accommodate the change in deliveries.

(C) DECREASED ALLOCATION FOR CLOSED COMPANY – The increased allocation shall be deducted from the allocation to the company that owned the processing facility that has been closed and the remaining allocation shall be unaffected .

(D) TIMING – The determinations of the Secretary on the issues raised by the petition shall be made within 60 days after the filing of the petition.

On July 17, 2003, those petitions were granted by CCC even though by letter of June 24, 2003, the Cooperative had requested their denial as being inconsistent with and in violation of its contracts with the growers. The Cooperative was advised at that time (Agency Certified Record, page 174):

...We regret the potential negative effect that our decision may have upon South Louisiana. However, we believe that section 359f(c)(8) of the Agricultural Adjustment Act of 1938, as amended, encourages the Department of Agriculture to honor grower petitions to transfer allocation commensurate with their production history if their mill closes.

On July 21, 2003, the Cooperative requested reconsideration of the July 17th decision.

On October 10, 2003, CCC denied the Cooperative's request for reconsideration (Agency

Certified Record, pp.256 - 258), stating that:

...Based upon the information available to CCC...CCC has determined to deny the Cooperative's request to reverse its July 17, 2003, approval of the growers' transfer requests. The growers meet the statutory conditions necessary for CCC to allow the transfer. However, in allowing these transfers to occur, CCC wishes to make clear that this approval does not affect in any manner private contractual obligations that the Growers may have and that the provisions of 359f of the Agricultural Adjustment Act of 1938 may not be used to avoid contractual obligations involving the Growers and other parties.

In initially approving the Growers' request, CCC did not pre-empt any existing rights and obligations of the Growers or any other party; similarly, today's determination in no way affects any obligation that may exist in any private contract or agreement between the Growers and any other party. If the Growers have a contractual obligation requiring that they deliver sugarcane to a processor, their action in requesting CCC to allow a transfer of allocation to another processor does not abrogate any obligation under the private contract.

CCC is approving the transfer of the allocations based solely upon the determination that the processor to whom they have delivered sugarcane in the past is no longer functioning and, thus, under section 359f of the Agricultural Adjustment Act of 1938, the Growers may at their own initiation, request that CCC transfer allocation to another processor. To the extent the Growers have initiated two separate courses of action that are contradictory, namely (1) entering into private agreements regarding the delivery of sugarcane that they produce to a specified processor and (2) requesting that CCC approve a transfer of allocation to another processor, the Growers must accept responsibility for the consequences of their actions.

While CCC is denying the Cooperative's request for reconsideration of CCC's July 17, 2003 determination, in light of the erroneous assumption of the Growers that CCC's July 17, 2003 determination preempts other contractual obligations of the Growers, CCC will allow the Growers until October 24, 2003 to weigh the consequences of their requests. Unless notified in writing prior to October 24, 2003, CCC will consider the transfer of the Growers' allocation, to the processors designated by the Growers to be final.

Except as set forth in the immediately preceding paragraph, CCC will not, under section 359f of the Agricultural Adjustment Act of 1938, accept petitions to transfer sugar cane allocations to a new processor once harvest begins.

On October 23, 2003, the petition in SMA Docket No. 04-0001 was filed to appeal those parts of the reconsideration opinion that stated the July 17th determination did not preempt other

contractual obligations that the growers may owe, and that CCC would not accept further applications for transfers once harvest began. The petition alleges that State laws were indeed preempted by CCC by its own final rule addressing the preemption of inconsistent State laws that it previously published in the Federal Register on August 26, 2002. It alleged further that CCC had not been given authority to fix deadlines. On November 17, 2003, CCC filed an Answer and a Motion to Dismiss the Petition. On November 25, 2003, a second Petition was filed by other growers making identical allegations in SMA Docket No. 04-0002. On December 12, 2003, CCC filed an Answer and Motion to Dismiss this second Petition.

Responses by Petitioners to the Answers and Motions to Dismiss were filed on December 10, 2003 in SMA Docket No. 04-0001, and on December 22, 2003 in SMA Docket No. 04-0002.

Notices of Intent to Intervene in both cases were thereafter filed by South Louisiana Sugar Cooperative, Inc., M.A. Patout & Son, Ltd., Raceland Raw Sugar Corporation, and Lafourche Sugars, L.L.C. On April 9, 2004, I entered an Order based on a teleconference held the day before in which May 28, 2004, was set as the date by which the parties would file the Agency Certified Record, motions with supporting briefs, specific identification of the Petitioners in SMA Docket No. 04-0001 and memoranda showing the facts in full as they know them and their legal arguments.

The parties complied with the deadline. The two proceedings have been consolidated and the caption for SMA Docket No. 04-0001 has been changed to show the actual Petitioners.

Upon a careful reading of the Agency Certified Record and the motions and memoranda filed, I have determined to dismiss both petitions as well as the requests by the Intervenors to set aside the reconsideration determination for the reasons that follow:

DISMISSAL OF THE PETITIONS

CCC has urged three reasons for the dismissal of the petitions.

First, CCC contends that the Petitioners were not adversely affected by any part of the reconsideration determination and are therefore without standing to appeal. This argument is rejected. Petitioners were indeed adversely affected by those portions of the reconsideration decision stating that they may be in violation of their contractual obligations if they send their sugarcane to facilities other than those owned by the Cooperative, and that the earlier decision in their favor was not intended to suggest otherwise. Petitioners therefore have standing to appeal that part of the reconsideration decision.

I agree, however, with CCC's second contention that Petitioners do not have standing to appeal the reconsideration decision's imposition of a deadline upon further grower applications for transfer of sugar marketing allocations. The Petitioners are all growers whose transfer applications were granted and none of them can claim to be adversely affected by this part of the decision. The Act (7 U.S.C §1357ii(a)) specifically limits appeals to:

any person adversely affected by reason of any such decision upon which relief can be granted.

CCC's third reason for dismissal is the one that is conclusive and leads me to dismiss both petitions in their entirety. The petitions fail to state a claim upon which relief can be granted. The essence of the Petitioners' claims for relief is that in granting Petitioners' requests to transfer their sugar marketing allocations, CCC thereby preempted State common law and could not later assert otherwise.

CCC is correct that it was not granted and did not exercise the power to preempt conflicting State common law. Petitioners contend that federal preemption of State common law took place when CCC promulgated a rule in implementation of the Act on August 26, 2002, (67

Federal Register 54925, at 54926), which provided:

Executive Order 12778.¹ The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

The implementing rule did not, as Petitioners contend, preempt all State laws. It expressly restricted its preemptive effect to inconsistent State laws.

Federal preemption applies only when it is explicitly stated in the statute; when it is implicitly contained in the statute's structure and purpose; when the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it; when compliance with both federal and state regulation is impossible; when Congress intends federal law to occupy an entire field of regulation leaving no room for the States to supplement it; or when a challenged State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *See Fidelity Federal Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, at 152-155, 102 S. Ct. 3014, at 3022-3023 (1982); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, at 698-699, 104 S. Ct. 2694, at 2700 (1984); and *Crosby v. National Foreign Trade Council*, 530 U.S. 363, at 372-373, 120 S.Ct. 2288, at 2293-2294 (2000).

None of these circumstances exist here. Congress never stated that State common law was to be preempted. The statutory provisions and the actions by CCC under them, can be and are being administered so as to avoid any conflict with the State common law. And this makes

¹ The rule should have referenced Executive Order 12988 which had replaced Executive Order 12778. The language of both Executive Orders was, however, identical.

sense. CCC's and the Secretary's expertise does not extend to interpreting and applying the principles of common law to alleged contractual breaches.

Although I have found no decisions looking to federal preemption of State common law, the Supreme Court has addressed preemption of Federal common law by federal statutes. In Oneida County, N.Y. v. Oneida Indian Etc., 470 U.S. 226, at 235-240, 105 S. Ct. 1245, at 1252-1254 (1985), the Supreme Court held that common law rights of action are not preempted by a federal statute when the statute did not speak directly to the question of remedies and did not establish a comprehensive remedial plan. The displacement of common law by a federal statute is, therefore, not to be lightly inferred.

The sugar allotment program can operate without preemption of the common law. CCC has demonstrated this to be so in the case before us.

The Act states that upon the close of a sugarcane processing facility, the growers that delivered sugarcane to that facility may elect to deliver their sugarcane to another processing company and petition the Secretary to modify processing company allocations to facilitate that election. 7 U.S.S. §1359 ff (c)(8).

CCC interpreted this language as encouraging the Department of Agriculture to honor such grower petitions. (Agency Certified Record, page 174).

This interpretation is permissible and consistent with the language and purposes of the Act. There is nothing in the Act to suggest that CCC's actions should preempt State common law or that CCC should interpret, weigh and apply the common law before coming to a decision on a petition by growers to modify allocations to allow them to deliver their sugarcane to another processing facility when a facility where they formerly made deliveries has closed.

The petition may be filed by growers who "elect to deliver their sugarcane to another

processing company” in light of the facility closure, (7 U.S.C. §1359ff(c)(8)(A)). Upon the filing of the petition, CCC then undertakes to determine whether the processing company where the growers elect to deliver the sugarcane has given its approval to the delivery, and that it has sufficient capacity to accommodate the change in deliveries. (7 U.S.C. §1359ff (c)(8)(B)). The section requires no further inquiry or finding by CCC. The allocation to that processing company may then be increased, and deducted from the allocation to the company that owned the closed facility. The section requires that a determination be made within 60 days after the filing of the petition. The language of the section and the purposes of the Act do not appear to contemplate that CCC will hold court during those 60 days and review contracts and actions taken under them to determine their validity and whether the growers may be breaching their terms. Those issues rightly belong with the State Courts that customarily interpret and apply the common law when contracts are in dispute.

In Louisiana Sugar Cane Products Inc. v. Louisiana Sugar Cooperative, Civil Action No. 04-0136 (USDC, E.D. LA, April 28, 2004), copy attached as Exhibit D to CCC’s Brief, proceedings involving the Act were remanded by the United States District Court for the Eastern District of Louisiana to a State of Louisiana Court. The United States District Court stated, at page 4 of the Order, that the State Court was the proper forum because “the Court is convinced that the claims asserted in plaintiff’s petition revolve around, and depend upon, state law issues of contract.”

Here too, the proper forum for the Petitioners, the Cooperative and the other Intervenors to determine who first breached the contracts between them and what their appropriate remedies should be, if any, is a State Court, and not a proceeding before the Secretary.

In that the Act and the Secretary’s actions under it have not operated to preempt State

common law, which is the essence of Petitioners' claims, the petitions are hereby dismissed for failing to state a claim upon which relief can be granted.

The Intervenors have similarly asserted that CCC should have denied the growers' petitions for transfer of marketing allocations because they were in breach of contractual obligations owed the Cooperative. Again, the Secretary was being asked to act in place of a State Court that is the proper forum to interpret and administer State common law. For the reasons expressed above, the Secretary was not empowered to interpret and apply State common law and CCC was not therefore being arbitrary and capricious or abusing its discretion when it refused to do so. The Intervenors have likewise failed to state a claim upon which relief can be granted and their various requests, claims and motions for any action beyond sustaining the reconsideration decision as issued, are also dismissed.

Copies of this Order shall be served by the Hearing Clerk upon each of the parties.

DATE

VICTOR W. PALMER
Administrative Law Judge