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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

ASARCO, INCORPORATED,  
CONTESTANT

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

CONTEST PROCEEDING

Docket No. SE 88-82-RM  
Citation No. 3252969; 7/16/88

Docket No. SE 88-83-RM  
Citation No. 3252970; 7/16/88

Immel Mine  
Mine ID 40-00170

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

ASARCO, INCORPORATED,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 89-67-M  
A. C. No. 40-00170-05520

Immel Mine

ORDER OF DISMISSAL

The procedural history of this case, with regard to discovery, has been set forth in previously issued Orders.

On October 23, 1989, Petitioner filed a Response to the Order of October 16, 1989. In its Response, Petitioner stated, inter alia, that it continues to decline to produce certain documents which were required to be produced by previous orders. Petitioner further stated as follows: "Given the inefficacy of first complying with and then appealing from the Administrative Law Judge's Discovery Order, the proper procedure is for the Administrative Law Judge either to follow the procedure set forth in Commission Rule 74(a)(1) (29 C.F.R. 2700.74(a)(1)) or to dismiss this action so that the Secretary may have this Order reviewed by the Commission." (Emphasis added).

On October 27, 1989, Respondent filed a Renewed Motion to Dismiss, requesting dismissal of this case based on Petitioner's refusal to comply with the Discovery Orders.

Based on the history of this case, wherein Petitioner's position has been clearly stated, and particularity based upon the above language quoted from Petitioner's Response of

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October 23, 1989, I conclude that to issue a show cause order at this point, pursuant to 29 C.F.R. 2700.63(a), would only serve to unduly delay a disposition of this case. I conclude, based on Petitioner's continued refusal to comply with the Discovery Orders previously issued, that dismissal of this case is warranted. Therefore, Respondent's Renewed Motion to Dismiss is GRANTED.

It is ORDERED that the above case be DISMISSED.

Avram Weisberger  
Administrative Law Judge