

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

June 2, 2011

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. PENN 2009-775
	:	PENN 2009-825
v.	:	PENN 2010-63
	:	
SHAMOKIN FILLER COMPANY, INC.	:	

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. On April 25, 2011, Shamokin Filler Company, Inc. (“Shamokin”) filed a document entitled “Petition for Interlocutory Review” with the Commission pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76, that is at issue in this Order. Shamokin seeks review of an order issued by Administrative Law Judge John Lewis on March 11, 2011, in which he ruled that Shamokin’s carbon plant is under the regulatory jurisdiction of the Mine Safety and Health Administration

Previously, on April 6, 2011, Shamokin had filed with the Commission a document entitled “Petition for Discretionary Review,” seeking review of the judge’s order. The Commission determined that this order was not a final decision that ended his jurisdiction over this matter. In his decision, the judge resolved the jurisdictional issue, but made no findings regarding the violations and penalties at issue. As a result, the Commission determined that Shamokin’s petition was not a valid petition for discretionary review of a final decision under section 113(d) of the Mine Act, 30 U.S.C. § 823(d). On April 8, 2011, the Commission issued an order denying the petition on that basis.

On April 8, 2011, Shamokin filed a Motion for Certification of Interlocutory Review with Judge Lewis. On April 12, 2011, Judge Lewis issued an Order Denying Certification for Interlocutory Review.

Upon consideration of Shamokin's petition, we have determined that it has failed to establish that the March 11, 2011, order issued by Judge Lewis involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. 29 C.F.R. § 2700.76(a)(2). We therefore deny the petition.

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Mary Lu Jordan, Chairman

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Michael F. Duffy, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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Patrick K. Nakamura, Commissioner

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