

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

April 30, 1997

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket Nos. WEST 93-336-DM through
ADMINISTRATION (MSHA)	:	WEST 93-339-DM
on behalf of JAMES HYLES,	:	
DOUGLAS MEARS, DERRICK	:	WEST 93-436-DM through
SOTO, and GREGORY DENNIS	:	WEST 93-439-DM
	:	
v.	:	WEST 94-21-DM
	:	
ALL AMERICAN ASPHALT	:	

ORDER

On March 19, 1997, All American Asphalt (“AAA”) filed a request for an order to show cause as to why the instant proceeding should not be dismissed. The primary basis for AAA’s request was the Secretary’s purported noncompliance with the administrative law judge’s January 9, 1997 and February 20, 1997 orders regarding the filing of a supplemental brief following the Commission’s remand of the case to the judge (*see* 18 FMSHRC 2096 (December 1996)). As authority for the Commission’s issuance of a show cause order, AAA relies on Commission Procedural Rule 66(a), 29 C.F.R. § 2700.66(a).

Having considered AAA’s request and the Secretary’s response, we deny AAA’s request. The proceeding is on remand before the judge. Under section 113 (d)(1) of the Federal Mine Safety and Health Act of 1977 (“Mine Act” or “Act”), the judge assigned to this case “shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith.” 30 U.S.C. § 823(d)(1). Commission Procedural Rule 66(a), upon which AAA relies, is in Subpart G of the Commission’s rules, which governs hearings and related matters before the Commission’s administrative law judges. Absent a petition for discretionary review of a final decision by an administrative law judge, Commission Procedural Rule 70, 29 C.F.R. § 2700.70, or compliance with the Commission’s interlocutory review procedures, Commission Procedural Rule 76, 29 C.F.R. § 2700.76, this case and motions filed in relation to it remain with the judge.

Accordingly, for the foregoing reasons, we deny AAA's request for the issuance of a show cause order.¹

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

¹ We note that the Secretary's actions fall far short of the conduct that has been the basis for show cause orders in prior Commission proceedings. *E.g.*, *Broken Hill Mining Company, Inc.*, 18 FMSHRC 679, 679-80 (May 1996) (failure to file brief or proffer a reason for doing so); *North Star Contractors, Inc.* 17 FMSHRC 886 (June 1995) (failure to file answer to motion for default judgment). Thus, while the Secretary's response to the January 9 order necessitated a second order from the judge and caused a further delay in this proceeding, the Secretary did respond to the orders.