

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET N.W., 6TH FLOOR  
WASHINGTON, D.C. 20006

February 17, 1995

ASARCO, INC.	:	
	:	
v.	:	Docket Nos. WEST 94-445-M
	:	WEST 94-446-M
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	

ORDER

In this case, the Commission granted a petition filed by the Secretary of Labor requesting review of Administrative Law Judge August Cetti's November 21, 1994 Order of Dismissal, in which he dismissed civil penalty proceedings against ASARCO, Inc. ("ASARCO") based on the Commission's decision in *Keystone Coal Mining Corp.*, 16 FMSHRC 6 (January 1994). The Secretary has now moved to reverse and remand the judge's decision, based on our decision in ASARCO, Inc., 17 FMSHRC \_\_\_, Docket No. SE 94-362-RM (January 19, 1995), in which we explained that *Keystone* addressed only the procedural validity of single shift samples in determining violations of the respirable dust standard for underground coal mines. Slip op. at 5. He has also moved to stay further proceedings in this case pending the outcome on remand in ASARCO, 17 FMSHRC \_\_\_.

ASARCO has concurred in the Secretary's motion to reverse and remand, but opposes his motion to stay.

Upon consideration of the Secretary's motion and the opposition filed by ASARCO, we vacate the judge's Order of Dismissal and remand this matter to the judge for further appropriate proceedings. The Secretary's request that the Commission stay proceedings on remand is denied without prejudice to his renewing such a request before the judge.

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Mary Lu Jordan, Chairman

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Joyce A. Doyle, Commissioner

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Arlene Holen, Commissioner

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Marc L. Marks, Commissioner

