

Upon consideration of the judge's certification, we hereby grant review of the judge's decision of January 12 and the issue of whether the private road that accesses National's cement plant is a "mine" within the definition of section 3(h)(1) of the Mine Act. 30 U.S.C. § 802(h)(1). Briefing shall be conducted in accordance with Commission Rule 76(c), 29 C.F.R. § 2700.76(c).

Michael F. Duffy, Chairman

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Commissioner Jordan, dissenting:

Given that the judge should be able to resolve all outstanding issues relatively quickly, review of his January 12 decision at this stage would not materially advance the final disposition of this case. Accordingly, I would not grant interlocutory review.

Mary Lu Jordan, Commissioner

Distribution

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