

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

AMERICAN COAL CO.,)
)
 Plaintiff,)
)
 V.)
)
 MINE SAFETY AND HEALTH ADMIN.,)
 RICHARD E. STRICKLER,)
 KEVIN G. STRICKLIN,)
 ROBERT L. PHILLIPS,)
 DAVID L. WHITCOMB,)
 KEITH ROBERTS, and)
 STEVE MILLER,)
)
 Defendants.)

Case No. **08-cv-814-MJR-SCW**

ORDER

REAGAN, District Judge:

Before the Court is Defendants’ Motion for Leave to File Additional Dispositive Motion (Doc. 65). Defendants perceive that a Mine Safety and Health Administration (“MSHA”) “Procedural Instruction Letter” effective October 19, 2010, is dispositive to Plaintiff’s claim in the Amended Complaint that there is a citation-writing quota for mine safety inspectors. Therefore, Defendants seek leave to file an additional dispositive motion. Defendants’ Motion to Dismiss the Amended Complaint (Doc. 49) is pending.

The “Procedural Instruction Letter” (Doc. 65-1) is a self-described “Enforcement Policy Reminder,” premised upon MSHA’s agency mandate under The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 *et seq.* The Letter states in pertinent part: “[T]he agency does not have a quota directive requiring inspectors to issue a minimum number of citations per inspection hour.”

At this juncture in the proceedings, there is a pending motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), raising jurisdictional issues. Defendants are proposing a motion, which due to the extraneous documentation upon which it would be based, would have to be pursuant to Federal Rule of Civil Procedure 56. Discovery has not commenced; in fact, discovery is stayed. (*See* Doc. 42). Therefore, the Court considers it premature to file such a motion. If the case survives the motion to dismiss, a schedule will be set, providing for additional dispositive motions.

IT IS THEREFORE ORDERED that Defendants' Motion for Leave to File Additional Dispositive Motion (Doc. 65) is **DENIED as premature**.

IT IS SO ORDERED.

DATED: February 18, 2011

s/ Michael J. Reagan

MICHAEL J. REAGAN
United States District Judge