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CONTESTS OF RESPIRABLE  
DUST SAMPLE ALTERATION  
CITATIONS  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
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5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

IN RE: CONTESTS OF RESPIRABLE                      Master Docket No. 91-1  
DUST SAMPLE ALTERATION CITATIONS

ORDER GRANTING MOTION TO CONDUCT DEPOSITIONS  
OF NON-EXPERT WITNESSES OUT OF TIME

On June 3, 1992, Contestants represented by Jackson & Kelly and included in Docket No. KENT 91-265-R et al. (Contestants) filed a motion for an order allowing them to conduct joint depositions of non-expert witnesses I. A. Bassett, Jr., and Raymond J. Carroll out of time. On June 10, 1992, Contestants filed an amended motion seeking an order allowing them to conduct joint depositions of non-expert witnesses Carter Elliott, I. A. Bassett, Jr., and Raymond Carroll. The amended motion was served by mail on counsel for the Inspector General, U.S. Department of Labor (OIG) on June 8, 1992. Contestants also seek a subpoena duces tecum compelling Inspector General Julian W. De La Rosa to produce all documents in his possession concerning MSHA Internal Investigation No. 890014, OIG Case No. 30-0801-0036 relating to the investigation of alleged tampering with coal dust cassette samples.

The three named proposed witnesses are stated to be in the OIG and to have been involved in the investigation of alleged tampering of coal dust samples taken by MSHA inspectors.

On October 29, 1991, I issued an order granting the OIG leave to enter a special appearance to oppose the motions of certain Contestants to compel testimony of Robert Thaxton. On March 16, 1992, the OIG withdrew its opposition to Contestants' motion to compel testimony of Thaxton. Action on the motion to compel was stayed by order issued November 20, 1991. The OIG withdrew its opposition because its investigation was closed on or before February 27, 1992, after it found no evidence of criminal wrongdoing or official misconduct on the part of MSHA inspectors who submitted coal dust samples displaying abnormal white centers.

The instant motion states that on March 13, 1992, counsel for the Secretary informed the Court and Contestants' counsel that the OIG completed its investigation and also informed the court and counsel that the Secretary is no longer asserting investigative privilege with respect to the OIG investigation. This was subsequent to January 31, 1992, the deadline for joint non-expert witness depositions in the Discovery Plan. The

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Secretary has not responded to the motion.

I conclude that Contestants have shown good cause for conducting the depositions out of time. Therefore the motion is GRANTED, and subpoenas are issued herewith in accordance with Contestants amended request for subpoenas.

This order gives Contestants the right to conduct depositions of the three named OIG employees, and to require the Inspector General to respond to the subpoena duces tecum. It does not, of course, preclude the Secretary from asserting any applicable claim of privilege with respect to any question asked at the depositions or any documents sought to be examined and produced.

James A. Broderick  
Administrative Law Judge