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MSHA V. M P & M COAL
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| SECRETARY OF LABOR, |) | CIVIL PENALTY PROCEEDING |
| MINE SAFETY AND HEALTH |) | |
| ADMINISTRATION (MSHA), |) | Master Docket No. 91-1 |
| Petitioner |) | Docket No. VA 91-535 |
| v. |) | A.C. No. 44-04632-03557D |
| |) | |
| M P & M COAL COMPANY, INC., |) | Mine No. 2 |
| Respondent |) | |

ORDER OF DISMISSAL

Before: Judge Broderick

On November 27, 1992, the Secretary filed a motion to dismiss this proceeding on the grounds that on August 6, 1991, the Respondent and Frank Hackney, President of Respondent entered into plea agreements, agreeing to plead guilty to charges of conspiracy to defraud the United States in connection with the civil violations charged herein. Respondent contracted with Triangle Research to handle its dust sampling program. Triangle's principal and agent admitted falsifying the samples submitted to MSHA and admitted that on numerous occasions they blew air on the filter surfaces of manufactured dust samples. Harry White and Ronald Ellis of Triangle have been convicted of defrauding the government and have been sentenced to prison. Respondent provided Triangle with signed blank dust data cards which were submitted to MSHA with the samples.

On August 7, 1992, Judge Samuel G. Wilson of the Western District of Virginia sentenced M.P & M, Inc. to pay a fine of \$30,000 and to 2 years probation. Frank Hackney was sentenced to 2 years probation and 60 days of home confinement. As part of the plea agreement the Secretary agreed to move to dismiss pending civil penalty proceedings against Respondent for violations of the laws governing the dust sampling program.

I conclude that under the circumstances dismissal of this proceeding effectuates the purposes of the Mine Act.

Accordingly, this proceeding is DISMISSED.

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James A. Broderick
Administrative Law Judge

Distribution:

Douglas White, Esq., Mark R. Malecki, Esq., Office of the
Solicitor, U.S. Department of Labor, 4015 Wilson Boulevard,
Suite 400 Arlington, VA 22203 (Certified Mail)

Ronald King, Esq., P.O. Box 1560, Grundy, VA 24614
(Certified Mail)

Frank W. Hackney, M P & M Coal Company, Inc., Rt. 1, Box 513,
Grundy, VA 24614 (Certified Mail)

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