

CCASE:
MSHA V. CAROL 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 91-583
v.)	A.C. No. 44-04079-03525D
)	
CAROL COAL CORPORATION,)	No. 1 Mine
Respondent)	

ORDER OF DISMISSAL

Before: Judge Broderick

On December 1, 1992, the Secretary filed a motion to dismiss this proceeding on the grounds that on August 2, 1992, the Respondent and Donald R. Lester, President of Respondent entered into plea agreements, agreeing to plead guilty to charges of conspiracy to defraud an agency of 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 May 8, 1992, Judge James C. Turk of the Southern District of West Virginia sentenced Carol Coal Company to pay a fine of \$30,000 and to 2 years probation. Donald R. Lester was sentenced to 2 years probation, 2 months home confinement, and a fine of \$5,000. 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.

James A. Broderick
Administrative Law Judge

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