

CCASE:
EDD POTTER COAL V. MSHA
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EDD POTTER COAL COMPANY,)	CONTEST PROCEEDINGS
Contestant)	
v.)	Master Docket No. 91-1
	)	Docket No. KENT 91-680-R
SECRETARY OF LABOR,	)	through KENT 91-697-R
MINE SAFETY AND HEALTH)	
ADMINISTRATION (MSHA),	)	Citation Nos. 9858737
Respondent	)	through 9858754; 4/4/91
)	
	)	Mine No. 2
	)	Mine ID 15-05436
)	
SECRETARY OF LABOR,	)	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH)	
ADMINISTRATION (MSHA),	)	Docket No. KENT 91-1136
Petitioner	)	A.C. No. 15-05436-03531D
v.)	
	)	Mine No. 2
EDD POTTER COAL COMPANY,)	
Respondent)	

ORDER OF DISMISSAL

Before: Judge Broderick

On December 8, 1992, the Secretary filed a motion to dismiss these proceedings on the grounds that on May 11, 1991, the Respondent Edd Potter Coal Company, and David Potter, principal 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 filtered surfaces of manufactured dust samples. Harry White and Ronald Ellis of Triangle have been convicted of defrauding the Government and have received prison sentences.

On August 10, 1992, Judge Joseph M. Hood, of the Eastern District of Kentucky, sentenced Edd Potter Coal Company to pay a fine of \$25,000 and to 2 years probation. David Potter was sentenced to 2 years probation including 3 months of home detention and 3 months of community service. 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 these proceedings effectuates the purposes of the Mine Act.

Accordingly, these proceedings are DISMISSED.

James A. Broderick
Administrative Law Judge

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