

CCASE:  
SOL (MSHA) V. KYN COAL  
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SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-294
Petitioner	:	A. C. No. 15-17134-03514
	:	
v.	:	No. 4 Mine
KYN COAL COMPANY	:	
INCORPORATED,	:	
Respondent	:	

ORDER TO ADVISE

The Secretary has filed a petition for the assessment of three civil penalties in the above captioned action. The citations allege that respirable dust samples submitted to the Secretary by the operator were invalid because respirable dust had been removed from the samples before submission.

There is presently pending for decision before Administrative Law Judge James A. Broderick a case involving alleged tampering of respirable dust cassettes at the Urling No. 1 Mine of Keystone Coal Corporation (Master Docket No. 91-1). A hearing on this matter was held November 30, 1993, through January 6, 1994. Previously, a common issues trial was held which lasted from December 1, 1992 to February 22, 1993, and a decision on the common issues was rendered on July 20, 1993 (15 FMSHRC 1456).

It does not appear from the record whether the issues in the instant case are identical to those in the Master Docket. However, the Master Docket is a matter of first impression with respect to alleged tampering of dust cassettes. It appears therefore, that at the very least, the decision to be issued in that case might be of general assistance in this proceeding. Accordingly, I propose to place this case on stay pending the decision in the Master Docket.

In light of the foregoing, it is ORDERED that within 21 days of the date of this order the parties advise me in writing of their views with respect to a stay.

Paul Merlin  
Chief Administrative Law Judge

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Distribution: (Certified Mail)

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