

CCASE:
SOL (MSHA) V. KYN COAL CO.
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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	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-324
Petitioner	:	A. C. No. 15-17143-03501 KJS
	:	
v.	:	No. 4 Mine
ENVIRONMENTAL MINE SERVICES,	:	
Respondent	:	
	:	Docket No. VA 94-32
	:	A. C. No. 44-06596-03501 KJS
	:	
	:	Docket No. VA 94-33
	:	A. C. No. 44-06395-03502 KJS
	:	
	:	No. 2 Mine
	:	
	:	Docket No. VA 94-34
	:	A. C. No. 44-06210-03501 KJS
	:	
	:	No. 9 Mine
	:	
	:	Docket No. VA 94-37
	:	A. C. No. 44-04703-03501 KJS
	:	
	:	No. 1 Mine
	:	
	:	Docket No. VA 94-38
	:	A. C. No. 44-03465-03501 KJS
	:	
	:	No. 3 Mine
	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. VA 94-27
Petitioner	:	A. C. No. 44-03465-03534
	:	
v.	:	No. 3 Mine
C & S COAL COMPANY,	:	
Respondent	:	

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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 94-28
Petitioner : A. C. No. 44-06210-03527
:
:
No. 9 Mine

v. :
EASTERN COAL COMPANY, :
Respondent :
:
:
:

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 94-29
Petitioner : A. C. No. 44-06395-03569
:
:
No. 2 Mine

v. :
BRENT COAL CORPORATION, :
Respondent :
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:
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 94-30
Petitioner : A. C. No. 44-06596-03579
:
:
No. 2 Mine

v. :
BLANKENSHIP AND RIFE :
INCORPORATED, :
Respondent :
:
:
:

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. VA 94-36
Petitioner : A. C. No. 44-04703-03578
:
:
No. 1 Mine

v. :
HIGHLANDER COAL CORPORATION, :
Respondent :
:
:
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ORDER TO SUBMIT INFORMATION

On August 18, 1994, the Solicitor filed a letter requesting that the stays in Kyn Coal Company, Docket No. Kent 94-294 and Environmental Mine Services, Docket Nos. KENT 94-324, VA 94-32, VA 94-33, VA 94-34, VA 94-37, and VA 94-38 be lifted, and that the remaining dockets, C & S Coal Company, Docket No. VA 94-27; Eastern Coal Company, Docket No. VA 94-28; Brent Coal Company, Docket No. VA 94-29; Blankenship & Rife Inc., Docket No. VA 94-30; and Highlander Coal Corp., Docket No. VA 94-36, not be

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stayed. A copy of the letter was sent to counsels for the operators.

On April 13, 1994, I issued an order of stay in Kyn Coal Co., pending a decision in the case specific trial in Keystone Coal Company, PENN 91-451-R et. al. A decision on the common issues had been previously rendered. 15 FMSHRC 1456 (July 1993). It appeared that the decision in Keystone Coal would be of some guidance in these matters. The cases involving Environmental Mine Services were stayed for the same reason. Thereafter, on April 20, 1994, a decision was issued in the case specific trial in Keystone Coal Company. 16 FMSHRC 857. And on May 27, 1994, the Commission granted review in IN RE: CONTESTS OF RESPIRABLE DUST SAMPLES ALTERATION CITATIONS, Master Docket No. 91-1 and Keystone Coal Mining Corporation, Docket Nos. PENN 91-451-R et al., involving both the common issues and mine-specific decisions. By order dated August 31, 1994, I granted the Secretary's motion to stay all cases in the master docket except for those on appeal to the Commission.

The Solicitor's letter in the instant cases states that the ultimate disposition in the cases now before the Commission will not affect the outcome of these cases because the respirable dust filters and the abnormal appearances are different than those in Keystone. I do not believe the specific outcome in these cases must depend upon the Commission's decision in Keystone in order for a stay to be appropriate. It is my belief that determinations by the Commission on matters such as burden of proof and expert testimony would be of assistance in these cases. However, the operators have not been heard from with respect to a stay.

In light of the foregoing, it is ORDERED that within 30 days the operators submit their views on whether or not these cases should be stayed.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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