

CCASE:
CONTESTS OF RESPIRABLE
DUST SAMPLE ALTERATION
DDATE:
19920123
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

IN RE: CONTESTS OF RESPIRABLE MASTER DOCKET NO. 91-1
DUST SAMPLE ALTERATION
CITATIONS

ORDER DENYING MOTION TO COMPEL
WRITTEN DISCOVERY

On January 7, 1992, Contestants represented by Street, Street, Street, Scott and Bowman (Contestants), filed a motion to compel answers to interrogatories and requests for production of documents served upon the Secretary of Labor (Secretary). The Secretary filed a response in opposition to the motion on January 17, 1992.

On July 26, 1991, Contestants served a First Set of Interrogatories and a Request for Production of Documents on counsel for the Secretary. According to the motion, the Secretary served her answers on counsel for the Contestants "on or around September 10, 1991."

On June 28, 1991, I issued an Amended Prehearing Order Adopting Plan and Schedule of Discovery as an order of the Review Commission. This was based on a plan and schedule of discovery submitted by counsel for the Secretary which was negotiated with counsel for some of the operators, and was revised following discussion at a Prehearing Conference on June 19, 1991. This discovery plan provided in part in II. D.1 that "(e)xcept for good cause shown, responses to requests for admissions, answers to interrogatories, . . . and responses to requests for production of documents shall be completed by August 30, 1991. Motions to compel shall be filed by September 16, 1991." The Plan and Schedule of Discovery was amended, upon motion of Jackson & Kelly, by order issued September 10, 1991. Article II. D.1 was changed to provide that answers to interrogatories and requests for production of documents should be completed by September 11, 1991 and motions to compel should be filed by October 4, 1991. The discovery plan was further amended by orders issued October 4, 1991 and December 3, 1991. Each of these orders provided that answers to interrogatories and requests for production of documents should be completed by September 13, 1991 and motions to compel should be filed by October 4, 1991.

~246

Contestants' motion to compel is clearly filed out of time under the provisions of the Plan and Schedule of Discovery. For this reason, the motion is DENIED.

James A. Broderick
Administrative Law Judge