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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceeding
Docket No. WILK 79-160-PM
A/O No. 06-00012-05002V

v.

North Branford Plant #7

NEW HAVEN TRAP ROCK-TOMASSO,
RESPONDENT

DECISION APPROVING SETTLEMENTS

ORDER TO PAY

The Solicitor advises that he and the attorney for the operator have discussed the alleged violations in the above-captioned proceeding. Pursuant to such discussion, the Solicitor has filed a motion to approve settlements agreed to by the parties.

This petition contains five 104(d)(1) orders. Three of these orders were issued for failure to provide tail pulleys with guards. These violations of 30 CFR 56.14-1 were originally assessed at \$600 each. The other two orders were issued for failure to provide berms on the outer banks of elevated roadways. These two violations of 30 CFR 56.9-22 were also originally assessed at \$600 each.

In his motion, the Solicitor recommends a settlement of \$500 for each violation. In support of these reductions, the Solicitor advises that the originally assessed amounts were too high in light of the fact that the inspection occurred within twenty days of the effective date of the Act, giving the operator little time to uncover and abate violations prior to that inspection. In addition, the Solicitor attached to his motion a copy of the assessment sheet which he advised contained findings regarding the six statutory criteria. However, the assessment sheet contains no such findings. Only the assessed amounts are listed. This kind of submission is inadequate and will not be acceptable in the future. The Solicitor must set out his views on the statutory criteria whenever he seeks approval of settlements.

Rather than disapprove the recommended settlements, I have personally reviewed these orders. Based upon this review, I conclude the violations are serious and that the operator was negligent. However, I also accept the Solicitor's representation that the inspection only occurred within twenty days of the effective date

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of the Act. The date of the inspection justifies the recommended reduction especially since the settlements remain sufficiently substantial to effectuate the purposes of the Act. The recommended settlements are therefore, approved.

ORDER

The operator is ORDERED to pay \$2,500 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge