

CCASE:  
SOL (MSHA) V. RIVERSDIDE CEMENT  
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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. WEST 79-98-M  
A/O No. 04-00010-05005

v.

Crestmore Plant

RIVERSIDE CEMENT COMPANY,  
RESPONDENT

DECISION  
ORDER TO PAY

Appearances: Alan Raznick, Esq., Office of the Solicitor, U.S. Department  
of Labor, San Francisco, California, for Petitioner, MSHA  
D. Marshall Nelson, Esq., Riverside Cement Company, Newport  
Beach, California, for Respondent, Riverside Cement Company

Before: Judge Merlin

This case is a petition for the assessment of two civil  
penalties filed by the Mine Safety and Health Administration  
against Riverside Cement Company.

At the hearing, the Solicitor moved that the two citations  
in this proceeding be settled for 100% of the assessed proposed  
penalty, amounting to \$555. He explained that the gravity  
involved was serious but that ordinary negligence was involved,  
and that he felt the proposed penalty to be a fair one. From the  
bench, I stated the following:

I want to state for the record what everyone here  
should know, and that is that a penalty proceeding  
before the judges of the commission is de novo;  
therefore, I'm not bound by the assessed amounts,  
either upwards or downwards. I have, therefore,  
reviewed both of these citations and the inspector's  
statement which were attached to the Solicitor's Motion  
to approve settlement. It appears to me that the  
proposed settlements are substantial and will  
effectuate the purposes of the Act. Accordingly, they  
are approved, and the operator is directed to pay  
\$555.00 (Tr. 3).

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ORDER

The operator is ORDERED to pay \$555 within 30 days from the date of this decision.

Paul Merlin  
Assistant Chief Administrative Law Judge