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SOL (MSHA) V. GENERAL PORTLAND
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. CENT 79-92-M
A/O No. 41-01163-05002

v.

Plant 53 Seagoville

GENERAL PORTLAND, INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT

The Solicitor has filed a motion to approve a settlement in the above-captioned proceeding.

Citation No. 153605 was issued when a back-up alarm on a bulldozer was found to be inoperative, a violation of 30 CFR 56.9-2. The assessed penalty was \$72 and the recommended settlement is \$40. In support of the recommended settlement, the Solicitor states that there was little operator negligence as the violation could not have been reasonably predicted. The Solicitor gives no basis for this representation. In the future the Solicitor should give reasons. Bare conclusions will not suffice. The Solicitor also states that the probability of injury was over-evaluated since very few employees were exposed to the risk, they were not exposed to the risk with any great frequency and they were not working in a situation where their attention would be distracted. I accept the Solicitor's representations and on the basis of low gravity conclude that the recommended settlement should be approved. The Solicitor further advises that respondent has already paid the \$40 penalty sought by MSHA.

ORDER

The recommended settlement is hereby APPROVED.

Paul Merlin
Assistant Chief Administrative Law Judge