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SOL (MSHA) V. CENTRAL PRE-MIX CONCRETE  
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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. WEST 80-325-M  
A.O. No. 45-00730-05004

v.

Pasco Pit

CENTRAL PRE-MIX CONCRETE CO.,  
RESPONDENT

DECISION AND ORDER

The parties move for approval of a settlement of four violations of the threshold limit values for silica dust in the amounts initially assessed, \$56.00 each, and one failure to post violation of section 109(a) at \$30.00. The total settlement proposed for the five violations charged is \$254.00.

A review of the respirable dust violations shows the concentrations exceeded the threshold limit values (TLV) by 200% to 400%. Despite this the only evaluation of gravity (made by the inspector) notes that the time weighted average was more than 20% of the TLV. It seems obvious, therefore, that MSHA, at least for the purposes of this motion, has chosen not to furnish a meaningful evaluation of the impact of long-term exposure to the concentrations alleged on the health of the miners involved. For these reasons I can only conclude that the miners involved were not subject to a significant risk of material health impairment. Compare, *Industrial Union Dept. v. American Petrol. Inst.*, \_\_\_\_\_ U.S. \_\_\_\_\_, No. 78-911, decided July 2, 1980, Slip op. 41-49.

The premises considered, and after considering the other criteria applicable, I find that in view of the de minimis nature of the violations charged the settlement proposed is acceptable.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the penalty agreed upon, \$254.00, on or before Friday, October 10, 1980 and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy  
Administrative Law Judge