

CCASE:

SOL (MSHA) V. ELDEAN GRAVEL

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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. LAKE 80-279-M
A.O. No. 33-01460-05002F

v.

Eldean Pit and Mill

ELDEAN GRAVEL COMPANY,
RESPONDENT

DECISION AND ORDER

The parties move for approval of a settlement of this matter in the amount of \$300, 60% of the amount initially assessed. Based on an independent evaluation and de novo review of the circumstances I conclude (1) that as a matter of law the violation charged is marginal in that it is not at all certain that the standard cited applies to the practice that resulted in the death of the front-end loader operator on October 15, 1979, (2) that assuming a violation occurred it was extremely serious in that a fatality resulted, and (3) that the death of the front-end loader operator was the result of his independent and inexplicably reckless disregard for safety while performing an operation not required by his employer. For these reasons, I conclude that despite the serious consequences of the front-end loader's grossly negligent conduct, that conduct is not rightly imputable to the operator.

Accordingly, it is ORDERED that the settlement proposed be, and hereby is, APPROVED. It is FURTHER ORDERED that the operator pay the penalty agreed upon, \$300, on or before Friday, October 30, 1980, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge