

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

October 11, 1983

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 83-57-M
Petitioner	:	A.C. No. 20-00801-05501
v.	:	
	:	Nugent Sand Mine
NUGENT SAND COMPANY, INC.,	:	
Respondent	:	

DISAPPROVAL OF SETTLEMENT

ORDER OF ASSIGNMENT

On August 8, 1983, I approved settlements for **three** of the six violations involved in this matter and I ordered the Solicitor to submit additional evidence with respect to the remaining three. On August 31, 1983, I issued a further order to the Solicitor to submit information. Such information now has been submitted.

After a review of the Solicitor's latest motion, I am unable to approve the proposed settlements of \$20 each. According to the Solicitor Citation 2088974, which was issued for failure to have a fire extinguisher on a **front-end** loader, involved a moderate degree of negligence because the employer was aware that a fire extinguisher was required. This factor alone would militate against a \$20 penalty. With respect to gravity the Solicitor states as follows: "An injury would have been unlikely because if a fire were to occur, the employee could jump out of the front-end loader." The Solicitor further states in this respect "The type of an injury, if one were to occur, would not have resulted in any lost workdays. The type of injury contemplated would be sprains or cuts from jumping off the front-end loader."

I must reject the Solicitor's representations. The fact that the violation might force an individual to jump out of the front-end loader is to me on its face a very serious matter. There is no support for the Solicitor's assertion that the type of injury contemplated would be only a sprain or cuts.

I have no alternative, therefore, but to take appropriate action to have this item set for hearing.

With respect to Citations 2088975 and 2088976 which involve failure to guard a take-up pulley and a head pulley, the Solicitor again states that the operator was guilty of a moderate degree of negligence because it was aware that pinch points must be guarded. Such a degree of negligence militates against a \$20 penalty. Moreover, I am unable to accept the Solicitor's assertion there was no likelihood of injury because employees seldom travel in the area. Nor am I able to accept his representation that the type of injury would not be in the form of a hand amputation but rather only in the form of a cut or a bruise when performing only maintenance duties. It may be that although the conveyor is supposed to be idle when maintenance is performed, it might be started up accidentally and the resultant injury could be very serious indeed. These matters should be resolved at a hearing.

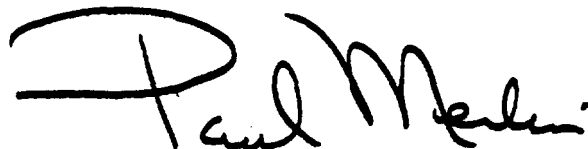
Accordingly, I have no alternative, therefore, but to take appropriate action to have these items set for hearing.

This case is hereby assigned to Administrative Law Judge James A. Broderick.

All future communications regarding this case should be addressed to Judge Broderick at the following address:

Federal Mine Safety and  
Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, VA 22041

Telephone No. 703-756-6215



Paul Merlin  
Chief Administrative Law Judge

Distribution:

Rafael Alvarez, Esq., Office of the Solicitor, U. S. Department of **Labor**, 230 South Dearborn Street, 8th Floor, Chicago, IL 60604 (Certified Mail)

Mr. Robert Chandonnet, Vice President, The Nugent Sand Company, Inc., P. O. Box 1209, Muskegon, MI 49443  
(Certified Mail)

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