

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 20, 1984

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. YORK 84-9-M
Petitioner	:	A.C. No. 19-00018-05503
v.	:	
LEE LIME CORPORATION,	:	Lee Quarry and Mill
Respondent	:	

DISAPPROVAL OF SETTLEMENT
ORDER TO SUBMIT INFORMATION

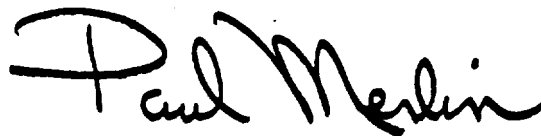
The Solicitor has filed a motion for approval for settlement for the one citation involved in this matter.

The Solicitor asserts that the assessment sheet which he has submitted contains findings concerning the size of Respondent's business, the health or safety standards violated, prior history, negligence, gravity, and good faith. This is a single penalty assessment and contrary to the Solicitor's representations, the assessment sheet has no information whatsoever on it. I do not, therefore, have before me the information necessary to make a de novo penalty assessment as **authorized by** section 110 of the Act.

Moreover, the Solicitor states that the "excessive nuisance dust condition cited was not known to the operator nor was it caused by its negligence." The dust condition may not have been known to the operator, but this does not mean that it should not have known. Based upon what the Solicitor has told me, I would not be warranted in finding that the operator was not negligent.

I am also surprised that the Solicitor recommends reducing the proposed penalty from \$20 to \$10. \$20 denotes a lack of gravity. For a further reduction in this minimal penalty to be warranted, there must be additional justification such as imposition of the original penalty would impair the operator's ability to continue in business. The Solicitor has submitted no such information..

In light of the foregoing, therefore, it is Ordered that within 30 days, the Solicitor submit an amended motion for settlement which complies with the requirements of the Act.



Paul' Merlin
Chief Administrative Law Judge

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