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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

v.

TRI-CITY PAVING COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-51-M  
A.C. No. 21-02824-05501

Cap's Pit

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On November 7, 1984, the Secretary filed a motion to dismiss and approve a settlement agreement involving the two alleged safety violations involved in this proceeding.

The violations were originally assessed at \$3,300 and the parties propose to settle for \$2,150.

The withdrawal order charging a violation of 30 C.F.R. 56.3-5, and the citation charging a violation of 30 C.F.R.

56.3-1 both were issued following an investigation of fatal accident, in which a front-end loader operator was killed when the bank under which he was working caved engulfing him and the loader with material from the pit wall. The order charged Respondent with working under a loose and dangerous bank and was originally assessed at \$3,000. The citation charged Respondent with failing to establish standards for the safe control of pit walls. It was originally assessed at \$300.

Respondent is a small operator and has had no history of violations in the 24-month period preceding the order and citation herein involved.

The motion states that the proposed penalty reductions (to \$2,000 and \$150) are justified because the Respondent's negligence was deemed moderate. The operator of the front-end loader had put himself in a dangerous position by working too

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close to the highwall. He had previously been advised at safety meetings not to move too close to the highwall. The violation of 30 C.F.R. 56.3-1 was considered a technical violation and would not in itself contribute to a hazard.

I accept the representations in the motion and conclude that the settlement is in the public interest.

Therefore, the motion is GRANTED and Respondent IS ORDERED to pay the agreed amount, \$2,150 within 30 days of the date of this order.

James A. Broderick  
Administrative Law Judge