

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 25, 1986

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 86-78-M
Petitioner	:	A. C. No. 51-00086-05501
	:	
v.	:	Puuwaawaa Pit & Mill
	:	
VOLCANITE LIMITED,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

The Solicitor has filed for approval a settlement agreement for the two violations involved in this matter. The original assessed penalties were \$1,300 and the proposed settlements are \$865.

Citation No. 2086735 was issued for violation of 30 C.F.R. § 55.9022 because the berms on the east side of the operator's pit bank were not built high enough to prevent rubber-tired equipment from going over the edge. Citation No. 2086736 was issued for violation of 30 C.F.R. § 55.3003 because of the excessive height of the east bank of the pit. The original assessments were based upon the fact that a dozer operator had been killed after driving off the edge of the pit. However, it now appears from the materials filed that the dozer operator had a stroke while driving the dozer and that this was the cause of the accident. Indeed, the Solicitor advises that there was no relationship between the height of the bank and the accident. The Solicitor further states that there is insufficient evidence to attribute the accident to the inadequate height of the berms. However, violations did exist and they were serious. Based upon the foregoing circumstances the proposed reduction for Citation No. 2086735 is from \$1,000 to \$665. The proposed reduction for Citation No. 2086736 is from \$300 to \$200. Finally, the Solicitor sets forth that the operator has no previous history of violations and is very small, having only 197 man-hours of production per year.

The representations of the Solicitor are accepted.

Accordingly, the settlement agreements are APPROVED and the operator is ORDERED TO PAY \$865 within 30 days of the date of this decision.

A handwritten signature in black ink that reads "Paul Merlin". The signature is written in a cursive, flowing style with a large initial "P" and "M".

Paul Merlin
Chief Administrative Law Judge

Distribution:

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