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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. SE 86-31-M
A.C. No. 31-00052-05504

v.

Pomona Quarry

MARTIN MARIETTA AGGREGATES,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On August 18, 1986, the parties filed a Joint Motion to Approve Settlement and to Dismiss this proceeding. A similar Motion was filed in the case of Secretary v. Yates Construction Co., Inc., Docket No. SE 86-28-M, with which this proceeding was consolidated by order issued April 18, 1986.

The proceeding against Martin Marietta involves two violations alleged in two citations for which penalties in the amount of \$4,157 were sought. By the settlement agreement, the Secretary proposes to "withdraw" the two citations and substitute therefor a new citation charging a violation of 30 C.F.R. 56.3012 which shall read as follows:

An employee (Daniel Preston Moore) of Yates Construction Company operating at Respondent's mine site on or about April 15, 1985 wrongfully worked between equipment and the pit wall in violation of 30 C.F.R. 56.3012.

The Secretary represents, and I accept the representation, that the new citation alleges a violation of the standard more directly applicable to the circumstances of this case. A penalty of \$2000 is proposed for the violation which Respondent agrees to pay.

The violation is serious in that it caused or contributed to a fatal accident. Respondent states that it made regular inspections to ensure the safety of the area involved in the

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citation, and the Secretary does not contest this assertion. Respondent had no history of prior violations from November 1982 through August 1985.

I have considered the motion in the light of the criteria in section 110(i) of the Act, and conclude that it should be approved.

Accordingly, IT IS ORDERED that the settlement agreement is APPROVED; that citations 2385993 and 2385994 are VACATED. A new citation, 2385993 is substituted and Respondent is ORDERED to pay within 40 days of the date of this decision, a civil penalty in the amount of \$2000 for the violation alleged therein. Upon payment of said penalty this proceeding is DISMISSED. The hearing scheduled August 27, 1986 in Greensboro, North Carolina is CANCELLED.

James A. Broderick
Administrative Law Judge