CCASE:
SOL (MSHA) V. NEIL SPRAGUE
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,   CIVIL PENALTY PROCEEDING
  MINE SAFETY AND HEALTH
  ADMINISTRATION (MSHA),   Docket No. WEST 87-129-M
                 PETITIONER   A.C. No. 05-02666-05504

          v.   Trupp Quarry

NEIL SPRAGUE,
          RESPONDENT

                    DECISION APPROVING SETTLEMENT

Before: Judge Lasher

     Citation No. 2638675 was issued on December 1, 1986, for
Respondent's failure to provide for an elevated haulage road. On
January 28, 1987, a Section 104(b) Withdrawal Order (Failure to
Abate Order No. 2637460) was issued since the Respondent failed
to provide the berm within the time period provided in the
Citation and its extension. In issuing the Withdrawal Order, the
Inspector noted that the Order was written to "replace" the
Citation "which was not complied with."

     In the parties' joint motion for approval of the settlement,
the Petitioner moved to vacate the Order since preparation for
the hearing "revealed that the failure to build a berm was caused
by adverse weather conditions." As part of the settlement the
administrative penalty originally sought by MSHA was reduced from
$195 to $30. The reduction appears justified in view of the
inference to be drawn from the fact that the Withdrawal Order has
been withdrawn. I conclude that this reflects a change in
Petitioner's initial belief that Respondent did not proceed in
good faith to promptly abate the violation after notification
thereof. It also appears that this is a small operator (8800
hours worked per year) who had a record of but 3 violations in
the preceding 24Ämonth period.

     In the premises, the settlement is approved.

                              ORDER

     1. Withdrawal Order No. 2637460 is vacated.

     2. Citation No. 2638675 is affirmed.

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    3. Respondent, if it has not previously done so, shall pay the
    Secretary of Labor within 30 days from the date of this decision
    the sum of $30.00 as and for the civil penalty for the violation
    described in Citation No. 2638675.

                          Michael A. Lasher, Jr.
                          Administrative Law Judge