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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. LAKE 88-59-M
A.C. No. 33-03990-05525

v.

Jonathan Limestone Mine

COLUMBIA PORTLAND CEMENT
COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

This case is a petition for the imposition of civil penalties for six citations which were originally assessed at \$831. On June 30, 1988, the Solicitor submitted a motion to approve settlements in a reduced total amount of \$467.50. On September 7, 1988, I issued a Decision Disapproving Settlements and Order To Submit Information. On October 18, 1988, the Solicitor submitted an amended motion to approve settlements. The amended motion abandons the attempt to reduce the original assessments and instead recommends settlements in these amounts.

The circumstances of each citation in this case are set forth in my decision and order of September 7, 1988. There is no need to repeat them here since the amended motion sets forth no new facts or considerations, but merely repeats what is in the citations and based thereon returns to the original assessments. I stated in my prior order that the original assessments are modest and upon further examination in light of the amended motion, I adhere to that view. However, I conclude that these amounts may be approved in this instance.

The parties are reminded that as I previously pointed out, penalty assessments are de novo before the Commission which is not bound by MSHA's proposed assessments, original or otherwise. An original assessment may prove too high or too low. Bearing this in mind, before the Solicitor submits a proposed settlement to a Commission administrative law judge, he should review it in light of the statutory criteria set forth in section 110(i), 30 U.S.C. 820(i), most particularly gravity and negligence. Finally, it should be a matter of concern to MSHA that within a

~1561

very short period of time this operator was cited for 72 violations. See also Docket Nos. LAKE 88Ä54ÄM, LAKE 88Ä55ÄM, LAKE 88Ä56ÄM, LAKE 88Ä58ÄM, and LAKE 88Ä62ÄM.

It is ORDERED that proposed settlements be APPROVED and that within 30 days of the date of this decision the operator pay \$831.

Paul Merlin
Chief Administrative Law Judge