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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 88-62-M
A.C. No. 33-03990-05526

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 five violations. Two of the violations were originally assessed at \$20 each and the remaining three violations were originally assessed at \$371. On June 30, 1988, the Solicitor submitted a motion for approval advising that the operator agreed to pay the originally assessed amounts for the two \$20 violations and proposed settling the remaining three violations for \$208.70.

On September 7, 1988, I issued an order approving one of the \$20 violations (Citation No. 3059478) and disapproving the remaining four violations because the motion contained insufficient information. On October 18, 1988, the Solicitor submitted an amended motion with additional information with respect to the \$20 violation. The amended motion also abandons the attempt to reduce the original assessments for the other three.

According to the Solicitor, Citation No. 3060312 was issued for a violation of 30 C.F.R. 56.12025, because the equipment grounding conductor for the west screw in the basement of the packhouse was broken off the drive motor. I originally disapproved this settlement because the Solicitor failed to support his conclusions. In his amended motion the Solicitor explains that before an accident could happen a ground fault on the drive motor would have to occur simultaneously with an employee contacting the motor or screw.

Based upon the foregoing additional information, I approve the \$20 settlement.

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The circumstances of the three remaining citations 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 very short period of time this operator was cited for 72 violations. See also Docket Nos. LAKE 88Å54ÅM, LAKE 88Å55ÅM, LAKE 88Å56ÅM, LAKE 88Å58ÅM, and LAKE 88Å59ÅM.

It is ORDERED that proposed settlements be APPROVED and that within 30 days of the date of this decision the operator pay \$391.

Paul Merlin
Chief Administrative Law Judge