

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 7, 1989

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. YORK 89-8-M
Petitioner	:	A. C. No. 19-00970-05501
	:	
v.	:	Chelmsford Mill
	:	
POMERLEAU BROTHERS, INC.,	:	
Respondent	:	

DECISION  
ORDER TO PAY

Appearances: David L. **Baskin**, Esq., Office of the Solicitor,  
U. S. Department of Labor, Boston, Massachusetts,  
for Petitioner.

Before: Judge Merlin

This case is a petition for the assessment of three civil penalties filed by the Secretary of Labor against Pomerleau Brothers, Inc. At the hearing, the Solicitor advised that the parties had agreed upon settlement recommendations of all items for the originally assessed amounts. The Solicitor placed the recommendations on the record. The hearing in this matter took place at the same time as another case which was heard on the merits.

Citation Nos. 2853598 and 2853599 were issued for violations of 30 C.F.R. § 56.9087 and § 56.9011, respectively. Upon a review of the record, I am satisfied that the proposed single penalty assessments which are the original amounts are appropriate for these items.

Order No. 2853597 was issued for a violation of 30 C.F.R. § 56.9003 because the No. 35 Euclid truck had not been equipped with adequate brakes. The proposed settlement is for the \$500 originally assessed penalty. MSHA found that the gravity of the violation was serious, because it created the danger of a haulage accident. The service brakes on the rear wheels did not function and the hand brake could not hold the empty truck on the ramp at the primary crusher. Under such circumstances the machine could have run out of control. In addition, the operator was negligent since a routine examination of the machine would have revealed this condition. The operator is small with no prior history. However, in view of the substantial degree of gravity and the

existence of negligence, I conclude \$500 is an appropriate penalty amount for this violation.

In light of the foregoing, the recommended settlements are APPROVED and the operator is ORDERED TO PAY \$540 within 30 days from the date of this decision.



Paul Merlin  
Chief Administrative Law Judge

Distribution:

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