FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

June 27, 1989

SFCRFTARY OF LABOR,	: CIVIL PENALTY PROCEEDI	NG
MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	Docket No. SF 89-51-M A. C. No. 40-02968-055	02
V.	Moltan Company	
MOLTAN COMPANY,		

:

Respondent

DISAPPROVAL OF SETTLEMENT PARTIAL APPROVAL OF SETTLEMENT

Before: Judge Merlin

This case involves two violations. Citation No. 3253027 was originally assessed at \$20 and T approve the settlement for this item.

However, \mathbf{T} am unable to approve the recommended settlement for Citation No. 03252473 which was originally assessed at \$98 and for which \$20 now is the recommended settlement. The Solicitor advises as follows regarding this item:

> "* * * the No. 1 cooler control electrical cabinet's three circuit breakers and six starter relays could only be operated and/or reset by opening the cabinet door and reaching inside the cabinet. Fmployees thus exposed themselves to the bare 480 volt terminals and conductor ends inside the cabinet."

Irecently considered a comparable situation in <u>A. H. Smith</u> <u>Stone Company</u> 11 FMSHRC _____ dated June 22, 1989 (copy enclosed), wherein it was shown that 480 volts would cause serious injury or death. A penalty of \$1,800 was assessed in that case. The Solicitor has provided no basis for her representation that in this instance occurrence of an accident would be unlikely.

The parties should be aware that I have repeatedly held that significant and substantial is not synonymous with gravity for Purposes of determining an appropriate penalty assessment. A. H. Smith Stone Company, supra. Th light of the foregoing, it is **ORDERED** that the \$20 settlement for Citation No. 3253027 be APPROVPD and that the operator pay \$20 within 30 days from the date of this order.

It is further ORDFRFD that within 30 days from the date of this order the **Solicitor** submit information sufficient to support her settlement recommendation for Citation **No.** 3252473.

Paul Merlin

Chief Administrative Law Judge

Enclosure:

ì

Uistribution:

G. Elaine Smith, Fsq., Office of the Solicitor, U. S. Department of Labor, 2002 Richard Jones Road, Suite B-201, Nashville, TN 37215 (Certified Mail)

Mr. Fdward J. Lucas, Moltan Company, Post Office Box 9, Middleton, KY 38052 (Certified Mail)

/gl