

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 25, 1989

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. LAKF 89-45-M
Petitioner : A. C. No. 47-02651-05501
v. :
: Portable Perz Plant
ARTHUR OVERGAARD-DIV./MATHY :
CONSTRUCTION COMPANY, :
Respondent :

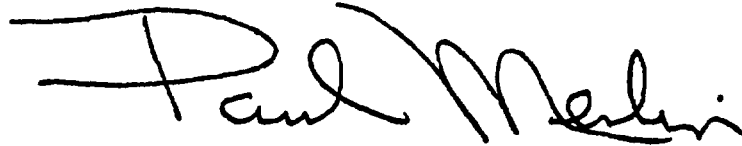
DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

The parties have submitted a motion to approve settlement of the one violation involved in this case. The penalty was originally assessed at \$5,000 and the proposed settlement is for \$3,700.

The parties' motion discusses the violation in light of the six statutory criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977. The subject citation was issued for a violation of 30 C.F.R. § 56.14001 because the 52-inch, self-cleaning tail pulley, on the crusher discharge belt conveyor, had not been guarded. An employee became entangled at the tail pulley and received fatal injuries. The parties represent that the penalty reduction is warranted because negligence which originally was rated as high, is less than originally thought. According to the Solicitor the operator demonstrated a moderate degree of negligence because it should have known the pulley area of the rock crusher was not guarded properly. However, employees had been directed by the operator not to work or enter the cited area. It is not known why this employee was working in this area. The operator promptly abated the violation. In addition, this is a small operator with no prior history of violations for the preceding two years. Based upon the foregoing representations, I approve the recommended settlement.

Accordingly, the motion to approve settlement is **GRANTED** and the operator is **ORDERED TO PAY \$3,700** within 30 days from the date of this decision.



Paul Merlin
Chief Administrative Law Judge

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