CCASE:
SOL (MSHA) V. MOBERLY STONE
DDATE:
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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,   CIVIL PENALTY PROCEEDINGS
  MINE SAFETY AND HEALTH
  ADMINISTRATION (MSHA),   Docket No. CENT 89-81-M
            PETITIONER   A.C. No. 23-01785-05511

          v.   Docket No. CENT 89-82-M
                                       A.C. No. 23-01785-05512
MOBERLY STONE COMPANY,
            RESPONDENT   Moberly Stone Company Quarry

                    ORDER DENYING MOTION TO APPROVE SETTLEMENT

     On September 29, 1989, the Secretary filed a Motion to
Approve Settlement and Dismiss Petition for Assessment of Civil
Penalties.

     Docket No. CENT 89-81-M contains seven alleged violations,
each assessed at $98 for a total of $686. Docket No. CENT 89-82-M
contains five alleged violations, assessed at a total of $294.
The motion states that with respect to four of the citations in
Docket No. CENT 89-81-M and two in Docket No. CENT 89-82-M (each
assessed at $20), Respondent will pay the penalties originally
assessed. With respect to the remaining three citations in Docket
No. CENT 89-81-M, the motion proposes that they be reduced from
$140 each to $20 each. The motion states with respect to each of
these violations that "although any injury caused by an accident
could be fatal," it is unlikely that the injury would occur, and
the violation should be reclassified as "nonsignificant and
substantial." The three remaining citations in Docket No. CENT
89-82-M are reudced from $140 to $20, $84 to $20 and $140 to $20.
The same reasoning is advanced in support of the reduction
sought.

     I have considered the motion in the light of the criteria in
section 110(i) of the Act and conclude that the reduction in
penalties proposed is not consistent with those criteria.

     Therefore IT IS ORDERED that the Motion to Approve
Settlement is DENIED.

     IT IS FURTHER ORDERED that the parties respond to paragraph
2 of the Prehearing Order of July 11, 1989, on or

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before October 16, 1989, and inform me of any dates in January or
February 1990 which would cause scheduling conflicts.

                              James A. Broderick
                              Administrative Law Judge