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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. YORK 93-149-M  
Petitioner : A. C. No. 19-00008-05522  
:  
v. : Chelmsford Quarry  
FLETCHER GRANITE COMPANY, :  
INCORPORATED, :  
Respondent :

ORDER DISAPPROVING SETTLEMENT  
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977.

On March 9, 1994, I issued a prehearing order directing the parties to confer about possible settlement and advise by May 4, 1994, the results of these discussions. I also set a hearing date of May 26, 1994. The Solicitor orally advised my law clerk by May 4 that this case settled and subsequently on May 9, 1994, filed a motion to approve settlement for the four violations involved in this case. In his motion for approval of settlement filed May 9, 1994, the Solicitor seeks a reduction in the penalties from \$7,500 to \$5,250.

The four violations in this case were all designated significant and substantial and found to be a result of unwarrantable failure on the part of the operator. In addition, the violations were specially assessed.

In his motion for settlement approval the Solicitor gives no reasons to support the proposed reductions in the penalties. Where, as here, the violations are serious and the operator's conduct has been characterized as unwarrantable, the Solicitor must provide a basis to support the settlements for which he seeks approval. The fact that the suggested penalties remain substantial does not in and of itself, warrant approval.

The Solicitor is reminded that the Commission and its judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act. 30 U.S.C. 820(k); See, S. Rep. No. 95-181, 95th Cong., 1st Sess. 44-45, reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 632-633 (1978). It is the judge's responsibility to determine the appropriate amount of penalty, in accordance

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with the six criteria set forth in section 110(i) of the Act. 30 U.S.C. 820(i); Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission, 736 F.2d 1147 (7th Cir. 1984).

Based upon the Solicitor's motion, I have no grounds upon which to conclude that the recommended penalties of \$5,250 are appropriate under the six criteria of section 110(i).

In light of the foregoing, it is ORDERED that the motion for approval of settlement be DENIED.

It is further ORDERED that within 30 days of the date of this order the Solicitor submit additional information to support his motion for settlement. Otherwise, this case will be set for hearing.

Paul Merlin  
Chief Administrative Law Judge

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