

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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February 20, 1996

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 94-226-M
Petitioner	:	A.C. No. 26-02007-05512
	:	
v.	:	Docket No. WEST 94-681-M
	:	A.C. No. 26-02007-05515
T.E. BERTAGNOLLI & ASSOCIATES,	:	
Respondent	:	Bertagnolli Aggregates

**DECISION APPROVING SETTLEMENT
ORDER CANCELING HEARING**

Before: Judge Cetti

The above-captioned cases are consolidated for evaluation and disposition. Docket No. WEST 94-681-M was assigned to the Judge on remand.

These consolidated cases are before me upon a petition for assessment of civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). Petitioner has filed a motion to approve a settlement agreement and to dismiss these cases.

In Docket No. WEST 94-226-M, under the proffered settlement, there is a reduction of the original proposed penalties as follows:

Docket No. WEST 94-226-M

<u>Citation No.</u>	<u>Alleged Safety Standard Violated (CFR Title 30)</u>	<u>Initial Proposed Penalty</u>	<u>Settlement Disposition</u>
4138636	56.11001	\$3,500.00	\$1,750.00
4139102	56.14109(a)	\$1,500.00	1,000.00
4139103	56.14109(a)	\$1,500.00	1,000.00
4139105	56.11001	\$3,500.00	<u>1,750.00</u>
		TOTAL	\$5,500.00

In Docket No. WEST 94-681-M there is a reduction of original penalties as follows:

Docket No. WEST 94-681-M

<u>Citation No.</u>	<u>Alleged Safety Standard Violated (CFR Title 30)</u>	<u>Initial Proposed Penalty</u>	<u>Settlement Disposition</u>
4139741	56.12016	\$5,200.00	\$3,500.00
4139747	56.15002	\$4,600.00	<u>Vacate</u>
		TOTAL	\$3,500.00

I have considered the representations and documentation submitted in these cases and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

ORDER

WHEREFORE, the motion for approval of settlement is **GRANTED** and Citation No. 4139747 and its proposed civil penalty are **VACATED**.

It is further **ORDERED THAT THE OPERATOR PAY** the approved penalties totaling \$9,000.00 to the Office of Assessments, Mine Safety and Health Administration, P.O. Box 360250M, Pittsburgh, Pennsylvania 15251 within 30 days of the date of this decision. Upon such payment these cases are dismissed. In view of the approved settlement, the hearing previously scheduled for February 20, 1996, is **CANCELED**.

August F. Cetti
Administrative Law Judge

Distribution:

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