

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET, N.W., Room 6003  
WASHINGTON, D. C. 20006-3867  
Telephone No.: 202-653-5454  
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August 2, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2000-421-M
Petitioner	:	A. C. No. 04-04679-05511
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	:	Docket No. WEST 2000-422-M
	:	A. C. No. 04-04679-05512
	:	
	:	Docket No. WEST 2000-423-M
	:	A. C. No. 04-04679-05513
	:	A. C. No. 04-04679-05515
	:	
v.	:	Mine: Montague Plant
	:	
	:	Docket No. WEST 2000-424-M
	:	A. C. No. 04-03404-05513
	:	
	:	Docket No. WEST 2000-425-M
	:	A. C. No. 04-03404-05514
	:	
	:	Docket No. WEST 2000-426-M
	:	A. C. No. 04-03404-05515
	:	
	:	Docket No. WEST 2000-427-M
	:	A. C. No. 04-03404-05516
	:	A. C. No. 04-03404-05517
	:	A. C. No. 04-03404-05519
	:	A. C. No. 04-03404-05520
	:	
	:	Mine: Scott River Plant
	:	
CONTRACTORS SAND & GRAVEL,	:	
INCORPORATED,	:	
Respondent	:	

**DECISION APPROVING SETTLEMENT**

**Before: Judge Barbour**

These cases involve seven petitions for assessment of civil penalty. They arise under section 105(d) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. §815(d)). They are before me on remand from the Commission (23 FMSHRC 570 (June 2001)), and they concern proposed penalty assessments that became final orders of the Commission either when the Respondent failed to submit a hearing request to contest the alleged violations or when the Respondent failed to answer the Secretary's petitions. Several years after most of the defaults

were entered, the Respondent requested the Commission reopen the proposed assessments so it could contest them. The Commission remanded the matters and instructed me to determine whether relief from the final orders was warranted (23 FMSHRC at 577).

Following the remand, the parties conferred and reached a comprehensive settlement, which the Secretary moves that I approve. I have considered the representations and documentation submitted, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act. I especially note the Secretary's representations that the Respondent was a small operator and is no longer engaged in mining.

The settlement amounts are as follows:

**WEST 2000-421-M**

<b>Citation/ Order No.</b>	<b>Date</b>	<b>30 C.F.R</b>	<b>Assessment</b>	<b>Settlement</b>
<b>A.C. No. 04-04679-05511</b>				
3460096	05/26/93	56.12025	\$ 102.00	\$ 22.00
3638714	06/08/93	56.12008	50.00	22.00
3638715	06/08/93	56.14107(a)	81.00	22.00

**WEST-2000-422-M**

<b>Citation/ Order No.</b>	<b>Date</b>	<b>30 C.F.R</b>	<b>Assessment</b>	<b>Settlement</b>
<b>A.C. No. 04-04679-05512</b>				
3638716	06/08/93	56.14130(h)	\$ 50.00	\$ 22.00

**WEST 2000-423-M**

<b>Citation/ Order Nos.</b>	<b>Date</b>	<b>30 C.F.R</b>	<b>Assessment</b>	<b>Settlement</b>
<b>A.C. No. 04-04679-05513</b>				
3911910	03/12/93	56.14103	\$ 382.00	\$ 22.00
<b>A.C. No. 04-04679-05515</b>				
3916592	06/07/95	56.5050	50.00	22.00

**WEST 2000-424-M**

<b>Citation/ Order Nos.</b>	<b>Date</b>	<b>30 C.F.R</b>	<b>Assessment</b>	<b>Settlement</b>
<b>A.C. No. 04-04679-05513</b>				
3638707	06/07/93	56.14107(a)	\$ 81.00	\$ 22.00
3638708	06/07/93	56.14107(a)	81.00	22.00
3638709	06/07/93	56.12008	102.00	22.00
3638710	06/07/93	56.14107(a)	81.00	22.00
3911923	06/07/93	50.30	90.00	22.00

**WEST 2000-425-M**

<b>Citation/ Order No.</b>	<b>Date</b>	<b>30 C.F.R</b>	<b>Assessment</b>	<b>Settlement</b>
<b>A.C. No. 04-04679-05514</b>				
3638706	06/07/93	56.14130(h)	\$ 50.00	\$ 22.00

**WEST 2000-426-M**

<b>Citation/ Order Nos.</b>	<b>Date</b>	<b>30 C.F.R</b>	<b>Assessment</b>	<b>Settlement</b>
<b>A.C. No. 04-04679-05515</b>				
3638705	06/07/93	56.14101(a)(2)	\$ 240.00	22.00
3638713	06/07/93	56.14132(a)	50.00	22.00
3638541	08/18/93	56.141008	50.00	22.00
3638542	08/18/93	56.141008	50.00	22.00
3638544	08/18/93	56.14132(a)	50.00	22.00

**WEST 2000-427-M<sup>1</sup>**

<b>Citation/ Order No.</b>	<b>Date</b>	<b>30 C.F.R</b>	<b>Assessment</b>	<b>Settlement</b>
<b>A.C. No. 04-04679-05516</b>				
3638712	06/07/93	56.14101(a)(3)	\$ 50.00	\$ 22.00

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<sup>1</sup> Docket No. WEST 2000-427-M, originally contained Citation No. 4241113, which was issued on June 25, 1997 and which alleged a violation of 30 C.F.R. §56.12028. The Commission declined to remand the proposed assessment of \$50.00 for this alleged violation and the proposed assessment became a final order. During the settlement negotiations, the Respondent recognized the finality of the order and agreed to pay the penalty in full.

3638546	08/18/93	56.14101(a)(3)	50.00	22.00
3911940	08/18/93	56.14130(c)	50.00	22.00

**A.C. No. 04-04679-05517**

3910093	05/03/94	56.12025	\$ 81.00	\$ 22.00
3910094	05/03/94	56.12013	50.00	22.00

**A.C. No. 04-04679-05519**

4341197	03/05/96	56.12004	\$ <u>102.00</u>	\$ <u>16.00</u>
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<b>Total:</b>			<b>\$2,023.00</b>	<b>\$500.00</b>
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**WHEREFORE**, the motion for approval of settlement is **GRANTED**, and it is **ORDERED** that within 30 days of this order, the Respondent pay a penalty of \$500.00 as specified above. In addition, within the same 30 days, the Respondent is **ORDERED** to pay a penalty of \$50.00 for the violation of 56.12028, alleged in Citation No. 4341113 (Docket No. WEST 20000-427-M (A. C. No. 04-03404-05520)).<sup>2</sup> Upon receipt of payment, this matter is **DISMISSED**.

David F. Barbour  
Chief Administrative Law Judge

Distribution:

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Eric Schoonmaker, Contractor's Sand & Gravel Supply, Inc., P. O. Box 956, Yreka, CA 96097

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<sup>2</sup> Payment may be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P. O. BOX 360250M, PITTSBURGH, PA 15251.