

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1730 K STREET, N.W., SUITE 600  
WASHINGTON, D.C. 20006

September 11, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 95-420-M
Petitioner	:	A. C. No. 10-01907-05505
	:	
v.	:	
	:	Portable Crusher No. 2
BECO CONSTRUCTION COMPANY,	:	
Respondent	:	

**ORDER TO SUBMIT INFORMATION**

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlement for the one violation in this case.

Citation No. 4343823 was issued for a violation of 30 C.F.R. ' 56.1000 because the operator did not notify MSHA when the crusher was moved. The violation was designated non-significant and substantial but negligence was evaluated as high. The originally assessed penalty was \$1,000. The parties request that the citation be modified to reduce negligence from high to moderate and that the proposed penalty be reduce to \$700. According to the parties, the operator mistakenly believed that notification of the commencement of operations at the new location was sufficient to comply with the standard.

I accept the parties representations and agree that negligence should be characterized as moderate. However, I am concerned about the size of the proposed settlement amount in light of the six criteria set forth in section 110(i) of the Act. 30 U.S.C. ' 820(i). MSHA in the narrative findings for special assessment considered this violation as non-serious. A \$700 penalty for a non-serious violation with only moderate negligence on the part of the operator appears excessive.

Accordingly, it is **ORDERED** that within 30 days of the date of this order the parties again confer and again advise with respect to a proposed settlement amount.

Paul Merlin  
Chief Administrative Law Judge

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