

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

May 2, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 95-64-M
Petitioner : A. C. No. 45-02518-05517
 :
v. : Harbor Rock Portable
HARBOR ROCK, INCORPORATED, :
Respondent :

ORDER ACCEPTING RESPONSE
DECISION APPROVING SETTLEMENT
ORDER TO PAY

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.

The parties have filed a joint motion to approve settlements for the two violations in this case. A reduction in the penalties from \$3,000 to \$959 is proposed. On March 16, 1995, an order was issued disapproving the settlement and directing the parties to file additional information to support their motion. On April 14, 1995, the parties filed a second motion to approve settlement.

Citation No. 4341585 was issued for a violation of section 103(a) of the Mine Act, 30 U.S.C. ' 813(a), because the operator's representative ordered the inspector off the mine property. The originally assessed penalty was \$1,000 and the proposed settlement is \$320. The motion filed by the parties fully sets forth the circumstances under which the operator's representative acted. Clearly, the representative violated the law. However, as set forth in the motion there now have been amicable and productive discussions between the parties and no recurrence. I am told that the parties recognize the statutory right of MSHA to conduct inspections without delay or interference. Based on these representations I will approve the motion. It goes without saying, I do not expect repetition of such behavior from any representative of the operator.

Citation No. 4341658 was issued as a 104(d)(1) citation for a violation of 30 C.F.R. ' 56.11012 because a railing, barrier or

cover was not in place at the jaw crusher which was near the access into the crusher control booth. The originally assessed penalty was \$2,000 and the proposed settlement is \$639. The parties advise that the penalty has been amended on the basis of the operator's present financial condition. I accept the parties' representations and conclude that the settlement is appropriate. I further note that the operator is small in size and promptly abated the violation.

In light of the foregoing, it is ORDERED that the settlement motion filed on April 14 is ACCEPTED as a response to the March 16 order.

It is further ORDERED that the recommended settlements be APPROVED.

It is further ORDERED that the operator PAY \$959 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge

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