

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

September 17, 1996

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 96-204-M
Petitioner	:	A. C. No. 04-00204-05519
	:	
v.	:	National Quarries
NATIONAL QUARRIES,	:	
Respondent	:	

**DECISION 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. The Solicitor has filed a motion to approve settlements for the four violations in this case. A reduction in the penalties from \$28,500 to \$19,950 is proposed.

The four violations in this case were issued as the result of a fatal accident. MSHA determined that proper procedures for handling a misfired hole were not followed, causing a miner to be fatally injured when he inadvertently drilled into a charged hole.

I cannot approve the settlement motion. The parties are 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 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).

The proposed settlement remains a substantial amount. However, the proposed reduction of 30% also is substantial. The Solicitor has not offered any reasons to support the suggested settlement. I will not approve settlements where there is no

justification for what I am being asked to approve. That a fatality is involved, compounds the error.

This is not the first time this Solicitor has submitted an inadequate settlement motion. In Bennie Wayne Curtis, Emp. by Canyon Country Enterprises, 17 FMSHRC 1810 (October 1995), I disapproved a recommended settlement from this Solicitor in a section 110(c) case where he gave no reasons. Also, in Chandler's Palos Verdes Sand & Gravel, 16 FMSHRC 1926 (August 1994), where an accident had occurred, I disapproved a proposed settlement unaccompanied by reasons and told the Solicitor that the fact that the suggested penalties remained substantial did not in and of itself warrant approval. In both cases the Solicitor subsequently submitted supplemental motions which were eventually approved. I would think that by now this Solicitor would realize that a settlement motion without reasons is a waste of everyone's time.

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

It is further ORDERED that within 20 days of the date of this order the Solicitor submit appropriate information to support his settlement motion. Otherwise, this case will be heard as scheduled.

**Paul Merlin**  
**Chief Administrative Law Judge**

**Distribution: (Certified Mail & Telecopied)**

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