

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

February 18, 1998

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. YORK 97-29-M
Petitioner	:	A. C. No. 19-00370-05515
v.	:	
	:	Webster Plant
WEBSTER DUDLEY SAND AND	:	
GRAVEL, INC.,	:	
Respondent	:	

## ORDER DENYING MOTION TO APPROVE SETTLEMENT AND NOTICE OF HEARING

In this civil penalty case, counsel for the Secretary has filed a motion to approve a proposed settlement. The motion is inadequate, and it is **DENIED**.

The motion states the parties believe payment by the Respondent of half the penalty originally proposed is "in the public interest and will further the intent and purpose of the ... Act." The motion asks that I accept on faith the representation that "counsel for the Secretary reviewed the violations cited and the data which formed the basis for the proposed assessment and ... determined the [settlement amount] is fair and equitable."

While it is reassuring to know counsel has concluded the settlement "is fair and equitable," under the Act, the ultimate judgement on the validity of this conclusion rests with me. This means that I too must review the violations cited and the data which form the basis for the proposed settlement. To do so I must know the facts that support the proposed penalties agreed to by the parties. This is why the Commission's regulations contemplate the moving party explain the reasons for the proposed settlement (20 C.F.R. § 2700.31), and why, when no reasons are given and there is no basis upon which to judge the proposed settlement, the motion must be denied.

Unless, an acceptable motion to approve the settlement is filed and approved within the next 10 days, the parties are advised the matter will be heard at 8:30 a.m., Friday, March 13, 1998, in Worcester, Massachusetts. A specific hearing site will be designated later. The requirements of the previously issued notice of hearing are reinstated.

David Barbour  
Administrative Law Judge

Distribution:

Ralph R. Minichiello, Esq., Office of the Solicitor, U. S. Department of Labor, One Congress Street, 11<sup>th</sup> Floor, P. O. Box 8396, Boston, MA 02114 (Certified Mail)

Dorothy Halloran, Office Manager, Webster Dudley Sand and Gravel, Inc., P. O. Box 186, Webster, MA 01570 (Certified Mail)

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