

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W. 6TH FLOOR
WASHINGTON D.C. 20006-3868

September 5, 1997

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|------------------------|---|----------------------------|
| SECRETARY OF LABOR | : | CIVIL PENALTY PROCEEDING |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA) | : | Docket No. YORK 97-17-M |
| Petitioner | : | A.C. No. 19-00364-05513 |
| | : | |
| v | : | |
| | : | |
| TRESCA BROTHERS | : | |
| SAND & GRAVEL, INC., | : | Tresca Bros. Sand & Gravel |
| Respondent | : | |

ORDER VACATING DEFAULT
ORDER TO REOPEN
DECISION APPROVING SETTLEMENT
ORDER TO PAY
ORDER OF DISMISSAL

Before: Judge Merlin

This case is before me pursuant to the Order of the Commission dated September 2, 1997.

On March 24, 1997, I issued a show cause order giving the operator thirty days to respond. On May 17, 1997, an order of default was issued directing the operator to pay the proposed penalties in this case. On July 1, 1997, the Solicitor filed a motion to approve settlement. A review of Commission records indicates that the Solicitor telephoned my law clerk on April 22, 1997, advising that the matter had settled. The telephone call was however, not noted in the file. I find the call constituted a timely response to the show cause order and that the default was issued in error. Accordingly, the case is reopened so that the settlement motion can be considered.

The Solicitor in his settlement motion proposes a reduction in the penalties for Citation Nos. 4569689 and 4569691 from \$651 to \$460. I have reviewed the documentation and representations and conclude that the proffered settlements are appropriate under the criteria set forth in section 110(i) of the Act.

With respect to the remaining violations, Citation Nos. 4569688, 4569690, 4569692, 4569698, and 4569699, the Solicitor advises that MSHA has vacated the violations and requests that the penalties be dismissed.

Accordingly, it is **ORDERED** that the default dated May 19, 1997, be and is hereby

VACATED and the case **REOPENED**.

It is further **ORDERED** that the motion for approval of settlements be **GRANTED**, and that the operator **PAY** a penalty of \$460 within 30 days of the date of this order.

It is further **ORDERED** that the penalties for Citation Nos. 4569688, 4569690, 4569692, 4569698, and 4569699 be **DISMISSED** because MSHA has vacated the violations.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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