

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

September 5, 1997

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. YORK 97-25-M
Petitioner	:	A.C. No. 19-00364-05514
	:	
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 April 16, 1997, I issued a show cause order giving the operator thirty days to respond. On June 19, 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 seeks a settlement for Citation No. 4569705, in the original amount of \$220. I have reviewed the documentation and representations and conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

With respect to the remaining violations, Citation Nos. 4569702, 4569703, and 4569704, the Solicitor advises that MSHA has vacated the violations and requests that the penalties be dismissed.

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

**VACATED** and the case **REOPENED**.

It is further **ORDERED** that the motion for approval of settlement for Citation No. 4569705 be **GRANTED**, and that the operator **PAY** a penalty of \$220 within 30 days of the date of this order.

It is further **ORDERED** that the penalties for Citation Nos. 4569702, 4569703, and 4569704 be **DISMISSED** because MSHA has vacated the violations.

Paul Merlin  
Chief Administrative Law Judge

Distribution: (Certified Mail)

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