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SOL (MSHA) V. O'BRIEN ROCK
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER
v.
O'BRIEN ROCK COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING
Docket No. CENT 84-42-M
A.C. No. 14-00139-05501
Chetopa Quarry

DECISION APPROVING SETTLEMENT

Before: Judge Lasher

The parties have reached a settlement of the three electrical violations involved which resulted in a fatality in the total sum of \$9000.00. MSHA's initial assessment therefor was \$12,000.00.

The terms of the settlement are as follows:

Citation No.	Assessment	Settlement
02095892	\$10,000	\$8,000
02095893	1,000	500
02095894	1,000	500

Attachments to the settlement agreement show that this family-owned business, as of October 31, 1983, had total assets of a value less than one million dollars and for fiscal year 1983 (ending October 31, 1983) sustained a net loss. Since the fatality which occurred on October 3, 1983, Respondent has liquidated its mining operations and now operates only a ready-mix concrete operation.

MSHA's motion for approval indicates inter alia that the "penalty reductions proposed in this particular case are based solely on factors separate and a part from negligence, gravity and the good faith of the operator, i.e., the subsequent cost of abatement, respondent's poor business showing the year of the accident, and respondent's decision to get out of the mining business."

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The parties also agree that if the settlement is approved that payment of the proposed penalty amount of \$9,000 be made in the following manner: \$375 to be paid upon the signing of this agreement and 23 consecutive payments of \$375, to be paid on the first of each month thereafter. If any payment is more than 30 days delinquent then the remaining balance will become due and owing immediately.

Although culpability is clear and is conceded, the economic considerations established in the record justify the 25% reduction from the special assessment originally issued by MSHA in this matter; approval thereof appears appropriate.

ORDER

Respondent is ordered to pay \$9000.00 to the Secretary of Labor over a 24-month period and in the manner specified in their agreement.

Michael A. Lasher, Jr.
Administrative Law Judge