

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021

July 27, 2004

SECRETARY OF LABOR, MINE SAFETY	:	CIVIL PENALTY PROCEEDING
AND HEALTH ADMINISTRATION	:	
(MSHA),	:	DOCKET No. CENT 2001-218-M
Petitioner,	:	A.C. NO. 39-00022-05547
	:	
v.	:	
	:	Mine: Dacotah Cement
DACOTAH CEMENT,	:	
Respondent	:	

ORDER APPROVING SETTLEMENT

This case is before me on Remand from a Decision by the Commission dated June 9, 2004, in which the Commission affirmed in part and vacated in part a Decision I made on July 31, 2002. At my request, the parties have reevaluated the factual record involved in my decision. The parties have reached a settlement agreement that they have jointly submitted for my approval. Under the proposed agreement, the Secretary concludes that the violation that was the subject of the Petition was of a lower gravity than originally alleged. The lower gravity requires modification of the citation to substitute "No Lost Workdays" for "Permanently Disabling" and to eliminate the classification of the violation as "Significant and Substantial." The Secretary also agreed to delete "Robert Rohrbach" from Line 15. The parties have agreed that the proposed Civil Penalty for the violation as amended should be \$2,500.00. I have reviewed the proposed Settlement and I find it is consistent with the Mine Safety Act and it is in the public interest. Therefore, it is

ORDERED that the joint motion to approve settlement is granted. The Secretary is directed to amend the citation as agreed to by the parties. The Respondent is directed to pay a Civil Penalty of \$2,500.00 within 30 days of the date of this Order. The parties are to bear their own costs. Upon receipt of the Civil Penalty directed by this Order, the Petition is **DISMISSED**.

Irwin Schroeder
Administrative Law Judge

Distribution:

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