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SOL (MSHA) v. MISSOURI GRAVEL  
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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.

MISSOURI GRAVEL CO.  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 85-22-M  
A.C. No. 23-00712-05501

Docket No. CENT 85-23-M  
A.C. No. 23-00712-05502

LaGrange Plant No. 3

Docket No. CENT 85-30-M  
A.C. No. 23-00712-05503

LaGrange Plant No. 1

DECISION APPROVING PENALTIES

Before: Judge Merlin

On June 26, 1985, I ordered the Solicitor to furnish information sufficient to justify the assessment of the proposed penalties for the twenty-nine violations involved in these matters. The operator has paid the proposed penalties totalling \$1,638. The Solicitor recognizes that this payment is not determinative of how these cases should be treated. However, because the operator did not answer, the Solicitor argues that a show cause order should be issued. The Solicitor recognizes that the operator who has paid, will not respond to the show cause order. Therefore, the Solicitor expects the operator to be held in default, relieving the Solicitor of the responsibility to justify the proposed penalties in a settlement motion.

I am well aware of the Commission's procedural regulations regarding show cause and default orders. However, I believe that once a penalty petition is filed, the Commission's jurisdiction attaches and it has the authority and responsibility to approve proposed penalties. Indeed, the Solicitor's own letter dated May 22, 1985, specifically states that he presumes payment of the penalties by the operator must be approved by the Commission. The Commission could not do this if it were to follow the Solicitor's proposed charade of meaningless show cause and summary default orders. Settlement motions have been filed by Solicitors in numerous cases where the operator paid the assessments before an answer. The Solicitor's motion to reconsider is therefore DENIED.

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Since however these penalty petitions were filed several months ago, I do not believe their disposition should be further delayed. In this instance, therefore, I have reviewed all the citations and pursuant to this review, have determined that the proposed penalties are appropriate under the Act and therefore approve them. The Solicitor should not view this as a precedent for not filing the required motions.

The operator having paid, this case is DISMISSED.

Paul Merlin  
Chief Administrative Law Judge