

CCASE:  
SOL (MSHA) V. ENERGY DEVELOPMENT CORP.  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),  v.  ENERGY DEVELOPMENT CORPORATION, RESPONDENT	Civil Penalty Proceeding  Docket No. PIKE 79-15-P Assessment Control No. 15-10998-03001  Holt Tipple
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DECISION APPROVING SETTLEMENT

Appearances: Edward H. Fitch IV, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner  
Frederick L. Delp, Esq., Wood, Grimm & Delp,  
Huntington, West Virginia, for Respondent in  
settlement negotiations

When the hearing in the above-entitled proceeding was convened on July 26, 1979, in Pikeville, Kentucky, counsel for the Mine Safety and Health Administration requested that a settlement agreement entered into by the parties be approved. Under the parties' settlement agreement, respondent would pay total penalties of \$200 in lieu of the total penalties of \$700 proposed by the Assessment Office. Counsel for MSHA stated that he had agreed to accept the reduction in payment of penalties on the basis of a letter from respondent's attorney which, in pertinent part, reads as follows:

\* \* \* Pertaining to the above-captioned matter, it is our opinion that Energy Development Corporation is not responsible for the violations with which the above-captioned proceeding is concerned. Energy Development Corp. is not actively engaged in mining at the present time due to the depressed coal market and financial problems resulting therefrom.

As I related to you by phone, Energy Development Corp. was at one time interested in using the facility where the violations occurred and, as a result, had sent a Mr. Paul Washburn to the facility to make certain repairs to the facility. Energy Development Corp. did not at that time, nor has it ever, owned, operated, or leased the facility to my knowledge. Energy Development Corp. has no intentions of utilizing this facility in the future in any capacity whatsoever. In addition, it is my understanding and belief that the alleged violations occurred as a result of activities conducted at the facility by an entity or entities other than Energy Development Corp. and prior to the time that Energy Development Corp. sent its repairman to make repairs to the facility.

Although it is Energy Development Corporation's contention that it should not be responsible for these violations, it is willing to settle this matter for the sum of \$200 in order to avoid the time and expense involved in a hearing on the matter. If this settlement is acceptable, please advise and the sum of \$200 will be remitted forthwith.

I find that respondent has given adequate reasons for accepting a reduction of the proposed penalties from \$700 to \$200. In addition to the mitigating factors set forth in respondent's letter, the official file shows that respondent corrected all of the violations cited in the inspector's order. In doing so, respondent made repairs on a facility which it never owned, leased, or operated.

In other settlement offers which I have approved, I have made a detailed evaluation of the Assessment Office's findings with respect to the six criteria which are required to be considered in determining civil penalties. I do not believe that a discussion of the six criteria is necessary in this instance because the settlement is being approved in light of extremely unique considerations which rarely occur. The dangerous conditions found by the inspector at the Holt Tipple have been corrected and the tipple's safety has been greatly improved for the benefit of any company which may undertake to operate the tipple in the future. Since there is considerable merit to respondent's contention that it was wrongly cited for the violations in the first instance, I find that its willingness to settle the issues by the payment of \$200 has served the purposes of the Federal Mine Safety and Health Act of 1977.

WHEREFORE, it is ordered:

(A) The motion for approval of settlement is granted and the settlement agreement is approved.

(B) Energy Development Corporation, pursuant to the settlement agreement, shall, within 30 days from the date of this decision, pay civil penalties totaling \$200 which are allocated to the alleged violations as follows:

Order No. 1 PW (7-1) 10/28/77	77.700-1(a).....	\$ 30.00
Order No. 1 PW (7-1) 10/28/77	77.505.....	25.00
Order No. 1 PW (7-1) 10/28/77	77.505.....	25.00
Order No. 1 PW (7-1) 10/28/77	77.1607(cc).....	20.00
Order No. 1 PW (7-1) 10/28/77	77.400(a).....	20.00
Order No. 1 PW (7-1) 10/28/77	77.400(a).....	20.00
Order No. 1 PW (7-1) 10/28/77	77.511.....	20.00
Order No. 1 PW (7-1) 10/28/77	77.513.....	20.00
Order No. 1 PW (7-1) 10/28/77	77.1108.....	20.00
Total Settlement Penalties in This Proceeding.....		\$200.00

Richard C. Steffey

Administrative Law Judge