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McCORMICK SAND V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

MCCORMICK SAND CORPORATION, APPLICANT	Applications for Review
v.	Docket No. LAKE 79-80-RM Citation No. 292383-1 5/7/79
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Docket No. LAKE 79-81-RM Citation No. 292384-1 5/7/79 McCormick Sand

DECISION

Appearances: Thomas J. O'Toole, Esq., Muskegan, Michigan,
for Applicant Karl Overman, Esq., Office of
the Solicitor, Department of Labor, for
Respondent

Before: Administrative Law Judge Michels

These matters are before me for decision upon Application s for Review filed May 14, 1979, pursuant to provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the Act). Answers were filed generally denying the allegations but admitting that the challenged citations were issued. A hearing was held on September 24, 1979, in Grand Rapids, Michigan, at which the parties were represented by counsel. The parties filed posthearing briefs and proposed findings and conclusions which have been carefully considered. The proposed findings not adopted or specifically rejected herein are rejected as immaterial or not supported by fact.

The charges concern Citation Nos. 292383 in LAKE 79-80-RM and 292384 in LAKE 79-81-RM. Both are the same except that they refer to different equipment. Citation No. 292383 reads: "A continuous metallic grounding conductor was not provided between the dryer plant and the transformer safety ground" (Applicant's Exh. No. 2). Citation No. 292384 reads: "A continuous metallic grounding conductor was not provided between the shop and the transformer safety ground" (Applicant's Exh. No. 1). In both instances the inspector charged a violation of 30 CFR 56.12-25 which states: "Mandatory. All metal enclosing or encasing electrical circuits shall be grounded or provided with equivalent protection. This requirement does not apply to battery-operated equipment."

Background Facts

There is little if any controversy on the electrical grounding in use by the Respondent. Respondent business is an industrial silica sand operation. The components include a work plant, a dryer plant and a shop. Electricity is supplied by a public utility. The system used is known as a "three phase ungrounded delta system" and it is not battery operated (Tr. 7). It was grounded by pin grounds or ground electrodes at three locations: One at the wash plant near the service entrance box, another at the dryer plant and finally a third one at the shop (Tr. 5-9, MSHA Exh. No. 1). The distance between the wash plant and the dryer plant is approximately 200 feet; that between the dryer plant and the shop, about 75 feet (Tr. 28-29).

The electrical system, as it had been modified, was designed and installed by an electrical firm known as Whittaker Electric. This firm supplies electric service and equipment and has offices in Grand Rapids and Muskegon, Michigan. It employs engineers and designers (Tr. 68-69). Robert Alcala, the firm's vice president in charge of construction and technical service is a graduate electrical engineer and is registered in the states of Michigan and Ohio (Tr. 136).

The electrical system which Whittaker Electric installed has ground fault indicating lights. These are designed to give a warning if a fault occurs in the system (Tr. 36). Tests were performed which showed that the resistance level of the ground was less than 25 ohms, which is within the limit set in the National Electrical Code (Tr. 33-34).

The abatement procedure, approved by MSHA, consisted of stringing an overhead wire from the wash plant to the dryer plant and there grounding it to the ground pins and another overhead wire from the dryer plant to the shop, and likewise grounding it to the ground pin (Tr. 78).

There is no dispute that Applicant's electrical circuit required a ground or equivalent protection under 35 CFR 56.12-25. There is also no question that the circuit was grounded in the sense that it was bonded to three pin grounds or ground electrodes (Tr. 8-9). Inspector Clyde Brown testified that such a ground system was in place and he never claimed that it was not a ground as the term is defined in the regulations e.g. (Tr. 42-43). He admitted that grounding in the aspect of accepting voltage would occur (Tr. 35, 40). Mr. John Kavolski an electrician and an electrical inspector for MSHA, also conceded that under the pin ground system, current with one phase going to ground, would travel through the earth (Tr. 47-48). (His further contention, was that depending upon the resistance of the earth, if the current isn't sufficient it will not trip the breakers (Tr. 48)). He agreed that the earth was part of the system and that there would be continuity in such a system (Tr. 59, 61).

The pin grounds in this instance were adequately sized according to the National Electrica Code in all respects. The

Code does not require a metallic grounding system for a delta ungrounded system (Tr. 81, 94).

In substance, Applicant employed a pin ground or ground electrode system which was installed by an electrician and which met the requirements of the National Electric Code. I find, therefore, the Applicant's electric system was grounded, though not grounded according to a method which MSHA demanded.

DISCUSSION

As noted above, mandatory standard 30 CFR 56.12-25, here charged, requires that "electrical circuits shall be grounded or provided with equivalent protection." The inspector alleged in his citation that a "continuous metallic grounding conductor" was not provided.

The issue, however, is not whether a continuous metallic grounding conductor was provided. The standard clearly does not require this. It demands only that the circuit be grounded or that equivalent protection be provided. Electrical grounding is defined in 30 CFR 56.2 as meaning "to connect with the ground to make the earth part of the circuit."

The principal argument of MSHA is that an effective grounding system must be continuous. It cites standard 30 CFR 56.12-28 which mandates that the "continuity and resistance" of grounding systems is to be tested; the testimony of John Kovalski an MSHA electrical inspector; and the National Electrical Code which provides that the path to ground from circuits, equipment and conductor enclosures shall be "permanent and continuous".

The problem with the terms "continuity" and "continuous" is that they are not clearly defined in this record. Mr. Kovalski, upon whom MSHA so heavily relies, failed to elaborate on the meaning of these terms when he had the opportunity to do so (Tr. 61). Furthermore, he conceded that there could be continuity in the pin grounding system which could be tested under the regulations. He qualified this only by stating that such would not be as effective as it should be (Tr. 61).

It is evident that MSHA in referring to "continuous" means a continuous metallic conductor, but the published sources relied on do not use such language. Moreover, MSHA appears to concede that in some instances a tie to a ground can sufficient if it is a cold water pipe system underground. This, it claims, creates a metallic grid which makes the grounding system continuous.

Finally, MSHA apparently defines the term "continuity" as meaning not only the bonding to the ground pins, but, at least where there is a three phase system, a continuous metallic path connecting all the phases to the ground.

In light of the above, it appears to me that MSHA is attempting to require performance which is not specified in the standard. (FOOTNOTE 1) The standard,

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fairly read, requires only a "ground" or its equivalent. It does not mandate a particular ground such as that mentioned in the citation, i.e., a "continuous metallic grounding conductor." The operator, moreover, has had no notice of any requirement under this standard other than to provide a "ground" or its equivalent.

In this instance the operator has provided a "ground." As noted, the standard requires only that the circuit be grounded and this the operator has done. It employed a qualified electrical contractor to install the system and the circuit met the requirements of the National Electrical Code for grounding.

Accordingly, I find and conclude that the charge in each docket of a violation of 30 CFR 56.12-25 has not been sustained and the citations should be dismissed. Further relief, as requested, is denied.

ORDER

It is ordered that Citation Nos. 292383 in LAKE 79-80-RM and 292384 in LAKE 79-81-RM be and hereby are vacated.

It is further ordered that these proceedings be dismissed.

Franklin P. Michels
Administrative Law Judge

~FOOTNOTE 1

It seems to me if MSHA believes that the a continuous metallic ground conductor is a more effective and therefore a better and safer ground for the ungrounded delta system, the mandatory standards should specifically require its use.