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SOL (MSHA) V. KARBBER 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

Civil Penalty Proceeding

Docket No. LAKE 80-110-M
A.C. No. 20-952-5003

v.

Karber Pit and Mill

KARBER GRAVEL COMPANY, INC.,
RESPONDENT

DECISION

Appearances: Gerald A. Hudson, Esq., Office of the Solicitor,
U.S. Department of Labor, Detroit, Michigan,
for Petitioner Larry Karber, President, Karber
Gravel Company, Inc., for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

Petitioner seeks civil penalties for two alleged violations of 30 C.F.R. 56.12-8 occurring on August 29, 1978. Pursuant to notice, a hearing was held in Lansing, Michigan, on August 8, 1980. Charles Millikan testified for Petitioner; Larry Karber testified for Respondent. Both parties waived their rights to file written proposed findings and briefs. Based upon the evidence presented at the hearing, I make the following

FINDINGS OF FACT

1. Respondent is the operator of a gravel pit and mill in Clinton County, Michigan, known as the Karber Pit and Mill.
2. Respondent produces sand and gravel for use and for sale. Its operation is in or affects interstate commerce. It is a small operator, having three employees.
3. Respondent does not have a history of prior violations.

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4. On August 29, 1979, Charles Millikan, a Federal mine inspector and a duly authorized representative of the Secretary of Labor, issued two citations each alleging that a bushing was not provided for electrical wires going into a junction box at the power house. One box was located on the north wall of the power house, the other on the west wall.

5. The plant was not in operation at the time the citations were issued and the power lines were not energized.

6. The electrical wires entering the junction boxes described in the citations did not have bushings at the time of the inspection on August 29, 1979.

7. Approximately 2 or 3 days prior to the issuance of the citations, Respondent began experiencing intermittent shorts in the underground lines leading from the junction boxes to the main plant.

8. Respondent was unable to uncover the source of the shorts and had called an outside electrician to investigate.

9. The power had been turned off, the covers were removed from the junction boxes and the bushings had been removed in the course of testing the wires to find the short.

10. The situation described in Finding of Fact No. 9 was not explained to the inspector by Respondent's foreman who accompanied him during the inspection.

11. The source of the shorts was never found. The wires were rerouted overhead. The junction boxes were covered and the bushings were reinserted. The citation was terminated on September 7, 1979.

DISCUSSION

I accept as factual the testimony of Mr. Larry Karber explaining the absence of bushings. Had the situation been explained to Inspector Millikan at the time of the inspection, it is likely that the citations would not have been issued. Under the circumstances, I find that the violations charged did not occur.

CONCLUSIONS OF LAW

1. The Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in its operation of the Karber Pit and Mill.

2. The undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.

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3. The violations charged in Citation Nos. 294267 and 294268 issued on August 29, 1979, by Federal mine inspector Charles Millikan did not occur.

ORDER

Citation Nos. 294267 and 294268 issued August 29, 1979, are VACATED and no civil penalty is assessed.

James A. Broderick
Chief Administrative Law Judge