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SOL (MSHA) V. LYON WASHED SAND AND GRAVEL
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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),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. LAKE 89-28-M
A.C. No. 21-00562-05502

v.

Lyon Washed S&G

LYON WASHED SAND AND GRAVEL,
RESPONDENT

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the Solicitor,
U.S. Department of Labor, Chicago, Illinois, for
the Secretary of Labor (Secretary); Ted Anderson,
Owner, for Lyon Washed Sand and Gravel (Lyon).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for five alleged violations by Lyon of mandatory safety standards. Pursuant to notice, the case was called for hearing in Marshall, Minnesota, on September 6, 1989. Michael Roderman testified on behalf of the Secretary. Ted Anderson testified on behalf of Lyon. The parties waived their right to file posthearing briefs, and each argued its case on the record. Based on the entire record and considering the contentions of the parties, I make the following decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Lyon is the owner and operator of a sand and gravel pit in Lyon County, Minnesota. The mine is a small mine, employing approximately four persons and producing approximately 60 to 80 thousand tons of gravel per year. During the two years prior to the violations alleged here, Lyon had no paid violations of mandatory standards.

Three of the violations charged involve the failure to have cover plates on electrical equipment; the other two involve inadequate splices in power cables. All violations were abated promptly in good faith.

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COVER PLATES

30 C.F.R. 56.12032 provides as follows:
Inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs.

On July 7, 1988, Federal mine inspector Michael Roderman issued citation 3078987 during a regular inspection of the subject mine. The citation charged that the door to an electrical control cabinet was left open, exposing 480 volt electrical circuits. The cabinet was in a trailer but access to it was not restricted. Neither testing nor repairs were being performed at the time. I conclude that a violation of the standard was established. It was moderately serious and, since it was known or should have been known to Lyon, it was the result of negligence. Based on the criteria in section 110(i) of the Act, I conclude that \$75 is an appropriate penalty for the violation.

On the same day the inspector issued Citation 3078988 because a cover plate was missing from a 480 volt stoker conveyor motor. the motor was in a small metal box, about 5 or 6 inches square. Electrical connections were exposed. the motor was about 8 feet above a walkway and therefore employee exposure was limited. Ted Anderson testified that the cover plate was left off to dry the motor out, because 90 percent of motor failures are caused by moisture. I conclude that the evidence establishes a violation of the standard. Because of the location of the motor it was not serious and was not caused by negligence. An appropriate penalty for the violation is \$20.

On the same day the inspector issued citation 3078989 because a cover plate on a rock picker motor was left off. 480 volt electrical wires were protruding from the junction box. The motor was about 10 feet above the ground and was unlikely to be contacted by persons. I conclude that a violation of the standard was established, that it was not serious, but was the result of Lyon's negligence. \$30 is an appropriate penalty for the violation.

PERMANENT SPLICES

30 C.F.R. 56.12013 provides:

Permanent splices and repairs made in power cables, including the ground conductor where provided, shall be:

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(a) mechanically strong with electrical conductivity as near as possible to that of the original;

(b) insulated to a degree at least equal to that of the original, and sealed to exclude moisture; and

(c) provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

On July 7, 1988, Inspector Roderman issued citation 3078990 because a 480 volt power cable feeding the rock picker motor had a splice made with wire nuts, not sealed to prevent moisture. The splice was not mechanically strong, was not insulated to a degree equal to that of the original, and was not bonded to the outer jacket. The cable was subject to vibration and was in an area where it could be contacted by persons, and a serious, even a fatal injury could result. I conclude that a violation of the standard was established. It was moderately serious and was the result of Lyon's negligence. I conclude that \$100 is an appropriate penalty for the violation.

On the same day the inspector issued citation 3078991 because a splice in a 480 volt cable leading to an electrical motor junction box about 12 inches from the box was made with wire nuts, not sealed to prevent moisture. The splice was not mechanically strong, was not insulated to a degree equal to that of the original, and was not bonded to the outer jacket. Because of its location, it was not normally accessible to persons, and was unlikely to cause injury. I conclude that a violation of the standard was established. It was not serious, but was caused by negligence. \$20 is an appropriate penalty for the violation.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED:

1. Citations 3078987, 3078988, 3078989, 3078990 and 3078991 are AFFIRMED.

2. Within 30 days of the date of this decision Lyon Washed Sand and Gravel shall pay the following penalties:

CITATION	PENALTY
3078987	\$ 75
3078988	20
3078989	30

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3078990
3078991

100
20

\$245

James A. Broderick
Administrative Law Judge