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SOL (MSHA) V. DANACO EXPLORATION INTERNATIONAL  
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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. CENT 90-173-M  
A.C. No. 34-01477-05504

v.

Corbin Mine

DANACO EXPLORATION  
INTERNATIONAL,  
RESPONDENT

DECISION

Appearances: V. Denise Duckworth, Esq., Office of the Solicitor,  
U.S. Department of Labor, Dallas, TX 75202  
for Petitioner;  
Donald Cook, Pro Se,  
for Respondent.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration ("MSHA") charges Respondent, Danaco Exploration International ("Danaco") with violating safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq. ("the Act").

A hearing on the merits was held in Oklahoma City, Oklahoma, on October 23, 1991. The parties waived the filing of post trial briefs.

Stipulation

Danaco agrees the Administrative Law Judge has jurisdiction to hear the case. (Tr. 78).

Citation 3447756

This citation alleges Danaco violated 30 C.F.R.  
56.12001.1

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DANIEL R. LAMBERT, is an MSHA inspector experienced in electrical matters. On June 18, 1990, he inspected Danaco. The quarry operated three conveyors and a rock breaker. (Tr. 7-11, 40). Mr. Lambert found the fuse for the 7 1/2 horsepower air compressor was too large. This determination was made by referring to Article 430-51 of the National Electrical Code (NEC). (Ex. C-5). The NEC, used by the mining industry, sets forth the proper size device to put in the circuit for the size of the motor. A 30-amp time-delay fuse was being used and a 19.25-amp would have been proper. A maximum size fuse of 24.75 could be used in accordance with the NEC. (Tr. 11-13). As a result, the circuits were not protected against excessive overload. A short circuit from a ground fault could create a fire, burns, shock and an electrocution hazard existed. (Tr. 14).

Donald E. Cook, an owner of Danaco, confirmed that the fuse for the motor to the air compressor was too large as it was a 30 amp fuse. (Tr. 77). For this reason, the citation should be affirmed since the circuits were not protected against excessive overloads as required by 56.12001.

A portion of Mr. Cook's evidence deals with the fact that this equipment was equipped with C11.3B heaters. If the heater, which acts as a thermostat, is subject to excessive current it will heat up and automatically shut off the equipment. (Tr. 71, 72, 77).

Mr. Cook argues it is better to have the equipment shut off than to deal with the whole circuit with "live juice" in it. (Tr. 77).

The regulation 56.12001 requires "fuses" of the "correct type." The effect of the heaters is not relevant when considered in relation to the contested regulation.

Since the circuit was not protected against overload, the citation should be affirmed and a civil penalty assessed.

Citation No. 3447757

In examining the long conveyor belt, Inspector Lambert found a fuse that was too large. Instead of the 30 amp time-delay fuse, a 19.25 amp fuse (or the closest round number of 20-amp) should have been used. The largest size fuse permitted would have been 24.75. (Tr. 17-20).

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In Mr. Lambert's opinion, the circuits were not protected against excessive overload in violation of 30 CFR 56.12001.2

DONALD COOK, Danaco's owner, indicated he had C11.3Bs in the equipment. Its 10.4 amps was adequate for the equipment's size and safe. (Tr. 77).

The situation here is similar to the previous citation. A 30 amp fuse was in place whereas Danaco should have used a 20-amp fuse. The circuits were not protected against excessive overload and I reject Mr. Cook's contrary opinion. Mr. Cook's use of the heaters as a safer means of protection cannot prevail as a defense as to the violation of this regulation.

Citation No. 3447757 should be affirmed and a civil penalty assessed.

Citation No. 3447758

This citation alleges a violation of 30 CFR 56.12041.3

Mr. Lambert issued this citation when he determined that the starter switch was too small for the size motor being used for the hydraulic pump of the rock cutter. (Tr. 22-28). The starter was rated at 25 horsepower and it was being used on a 30 horsepower motor. Printed on the starter was "25 H.P." and size number 2. Printed on the motor name plate was "30 H.P."

The starter makes and breaks the electrical circuit to the motor. Danaco's failure to comply with the limitations on the equipment violates custom and practice in the industry.

By way of a defense Mr. Cook denied the starter was inadequate. He indicated he is familiar with Danaco's electrical equipment. He was using a GE No. 2 magnetic starter. It is rated for a maximum of 45 amps and goes to a 25 horsepower motor.

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GE recommends it and the NEC will accept it. The part number is C21.4B heaters. That is a 20 amp heater. If there is an excess of 20 amps being put through the starter, the heaters will warm up, expand like a thermostat and shut the entire heater off. This makes the circuit safe without dealing with live current. (Tr. 71, Exh. R-1).

Inspector Lambert indicated the starter switch was too small. But GE recommends it up to 45 amps. Any GE No. 2 starter on the front reads "maximum amps 45." (Tr. 72).

Mr. Cook believed he had half the capacity left after he used 20 amps. (Tr. 73).

I credit Mr. Cook's testimony as he should be familiar with Danaco's electrical equipment. Further, his testimony as to the GE No. 2 starter is uncontradicted. Finally, I concluded such GE equipment capacity was of a "safe capacity" as required by 56.12041.

Citation No. 3447758 should be vacated.

Citation No. 3447760

This citation alleges Danaco violated 30 C.F.R. 56.12032.4

Mr. Lambert issued this citation when he observed a missing cover plate for a 120 volt lighting outlet. The missing cover plate was located in a circuit breaker panel. The missing plate exposed wiring associated with the circuit breakers.

The cover plate prevents a person from contacting exposed wires. The circuit breakers were similar to those found in most homes but the voltage here was higher.

DONALD E. COOK testified the electrical panel with 6 or 8 circuit breakers is similar to those found in most homes today. If too much current goes through them, they automatically kick off. The wires were not exposed. The circuit breaker was measured at 3 1/2 inches by 2 1/2 inches. (Tr. 68, 70).

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Mr. Cook agrees the cover plate was missing and technically a cover is required, but it was unlikely anyone would stick a finger on anything "hot." If a miner reached up high to flip the switch he would be standing on a rubber mat. (Tr. 69).

All of the circuit breakers were exposed. (Tr. 70).

The witnesses both agree there was no cover plate on the panel. These facts establish a violation of 56.12032.

At the hearing, Mr. Cook produced an electrical plug used in the panel. He demonstrated that only a minimal hazard would be involved since it would be difficult to touch the live wires when the electrical plug was in the panel. Danaco's evidence does not excuse the violation. However, it is a factor to be considered in assessing a civil penalty since the uncontroverted evidence reduces the gravity.

Citation No. 3447761

This citation alleges a violation of 30 C.F.R. 56.12004.5

Mr. Lambert issued this citation when he found the conductor (wiring) size was insufficient in accordance with NEC 430-21. (Tr. 33-40, Ex. C-7).

In Mr. Lambert's opinion, the NEC permits full load current plus 125% to determine the necessary amperes. (Tr. 34-35).

Mr. Lambert knew the horsepower of the motor by looking at the nameplate on the motor.

In Mr. Lambert's view, the electrical wiring was insufficient. (Tr. 36).

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According to Mr. Cook, the inspector assumed the motor was 30 horsepower. However, Mr. Cook measured the amperage<sup>6</sup> at full load. The amperemeter indicated it was a 20-horsepower motor. As a result it was well within the limits of the equipment. (Tr. 73, 74).

Mr. Cook used an amperemeter to determine what the motor was drawing. (Tr. 74). The tag on the motor showing the horsepower at 30 was incorrect as the motor had been rebuilt by W.W. Electric in Oklahoma City. (Tr. 75). If it was a 30-horsepower motor it could have a 40-amp full load. If it was a 20-horsepower motor, a full load would be 27 according to the NEC. The amperemeter showed Mr. Cook that all of his connections, starters and wires were legal.

Mr. Cook checked the motor with an amperemeter when he installed it two years ago. He and Inspector Lambert also checked it with an amperemeter on the day of the inspection. (Tr. 74, 78).

The pivotal issue presented here is the horsepower of the motor. Inspector Lambert relied solely on the motor nameplate which showed "30 horsepower."

While Mr. Cook did not unequivocally know the horsepower of the motor he relied on the amperemeter measurement which indicated the motor was 20 horsepower. Mr. Cook checked the motor with an amperemeter when it was installed two years ago, as well as at the time of the inspection.

A motor plate of 30 horsepower would apparently be a contradiction with a designation of "full load amp 27."

Mr. Cook's testimony is un rebutted that the motor had been rebuilt. Further, the amperemeter showed 27 or 28 amps when it was installed two years ago and again at the time of the inspection. (Tr. 78, 79).

In short, I conclude the motor was a 20 horsepower. As a result, the electrical conductors were of "a sufficient size and current-carrying capacity" for the motor as required by 56.12004.

Citation No. 3447758 should be vacated.

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### Civil Penalties

Section 110(i) of the Act mandates consideration of six criteria in assessing civil penalties.

Danaco, described as a quarry and a rock breaker with three conveyors, appears to be a small operator and the penalties provided in this order are appropriate.

Inspector Lambert testified the proposed penalties would not affect Danaco's ability to continue in business.

The parties agreed Danaco had a low incidence of prior adverse history. (Tr. 5, 6).

Danaco was negligent in that the incorrect fuses and the missing cover plate in the electrical panel were obvious conditions. Further, the operator should have observed these defects.

The gravity involving the missing fuses was high since an excessive overload could be placed on the electrical system. If a short circuit occurred, fire, shock and electrocution could result.

The gravity involving the missing cover plate is low since it is unlikely that anyone could contact any exposed energized wires.

The operator abated the violative conditions. Danaco is accordingly entitled to statutory good faith.

For the foregoing reasons I enter the following:

#### ORDER

1. Citation No. 3447756 is AFFIRMED and a penalty of \$20 is ASSESSED.

2. Citation No. 3447757 is AFFIRMED and a penalty of \$20 is ASSESSED.

3. Citation No. 3447758 is VACATED.

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4. Citation No. 3447760 is AFFIRMED and a penalty of \$15 is ASSESSED.

5. Citation No. 3447761 is VACATED.

John J. Morris  
Administrative Law Judge

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FOOTNOTES START HERE

1. 56.12001 Circuit overload protection.

Circuits shall be protected against excessive overload by fuses or circuit breakers of the correct type and capacity.

2. Cited supra fn 1

3. 56.12041 Design of switches and starting boxes.

Switches and starting boxes shall be of safe design and capacity.

4. 56.12032 Inspection and cover plates.

Inspection and cover plates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs.

5. 56.12004 Electrical conductors.

Electrical conductors shall be of a sufficient size and current-carrying capacity to ensure that a rise in temperature resulting from normal operations will not damage the insulating materials. Electrical conductors exposed to mechanical damage shall be protected.

6. Amperage: the strength of a current of electricity expressed in amperes. A dictionary of Mining, Mineral and Related Terms, 1968, page 36.