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SOL (MSHA) V. RENNEY'S CREEK MINE  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 92-474-M
Petitioner	:	A.C. No. 31-02078-05504
v.	:	
	:	Docket No. SE 93-54-M
RENNEY'S CREEK MINE,	:	A.C. No. 31-02078-05505
Respondent	:	
	:	Renney's Creek Mine

DECISION

Appearances: Rafael Batine, Esquire, Office of the Solicitor,  
U.S. Department of Labor, Atlanta, Georgia,  
for Petitioner;  
Andy Purifoy, Vice-President, Renney's Creek  
Mine, New Bern, North Carolina, for Respondent

Before: Judge Melick

These consolidated cases are before me upon petitions for civil penalties filed by the Secretary of Labor under Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," charging Renney's Creek Mine with violations of mandatory standards. The general issue is whether Renney's Creek Mine violated the cited standards and, if so, what is the appropriate civil penalty to be assessed. Additional specific issues are addressed as noted.

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Citation No. 3885035 alleges a violation of the mandatory standard at 30 C.F.R. 56.12018 and charges that "[t]he electrical circuit breakers located at the central shop, were not labeled to identify the circuits, and identification by location was not possible."

The cited standard provides that "[p]rincipal power switches shall be labeled to show which units they control, unless identification can be made readily by location."

The undisputed testimony of Inspector Terry Scott of the Mine Safety and Health Administration (MSHA) was that on July 8, 1992, during the course of an electrical inspection at the Renney's Creek Mine he discovered the cited violation. He noted that these circuits provided power for inside the shop and if the wrong circuit were cut and an uncut circuit

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worked upon then a shock and electrocution hazard was presented. He concluded that serious injuries were "unlikely" however because the main breaker was in fact used to cut all power to all of the circuits and no separate breakers were used. He concluded that the violation was the result of operator negligence because other control boxes were properly labeled throughout the mine. I accept the undisputed findings of Inspector Scott.

Citation No. 3885036 alleges a "significant and substantial" violation of the standard at 30 C.F.R. 56.4104(a) and charges that "[s]even open containers of used motor oil and transmission fluid was [sic] allowed to accumulate in the shop, where welding, cutting and smoking was permitted, which could create a fire hazard."

The cited standard provides that "[w]aste materials, including liquids, shall not accumulate in quantities that could create a fire hazard."

According to the undisputed testimony of Inspector Scott, during the course of his inspection on July 8, 1992, he in fact observed seven open containers, some with motor oil and some with transmission fluid in the shop area within 10 to 15 feet of an area in which welding had occurred. Scott also observed cigarette butts within 10 to 15 feet of the motor oil. Scott thought that it was reasonably likely that if a fire started you could have injuries trying to put the fire out or trying to escape from the fire. He opined that "slag" or hot metal emitted during the welding process could ignite the motor oil and transmission fluid.

A violation is properly designated as "significant and substantial" if, based on the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature. Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (1981). In Mathies Coal Co., 6 FMSHRC 1, 3-4 (1984), the Commission explained:

In order to establish that a violation of a mandatory standard is significant and substantial under National Gypsum the Secretary must prove: (1) the underlying violation of a mandatory safety standard, (2) a discrete safety hazard -- that is, a measure of danger to safety -- contributed to by the violation, (3) a reasonable likelihood that the hazard contributed to will result in an injury, and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

See also *Austin Power Co. v. Secretary*, 861 F.2d 99, 103-04 (5th Cir. 1988), aff'g 9 FMSHRC 2015, 2021 (1987) (approving Mathies criteria).

The third element of the Mathies formula 'requires that the Secretary establish a reasonable likelihood that the hazard contributed will result in an event in which there is an injury. (U.S. Steel Mining Co., 6 FMSHRC 1834, 1836 (1984), and also that in the likelihood of injury be evaluated in terms of continued normal mining operations (U.S. Steel Mining Co., Inc., 6 FMSHRC 1473, 1574 (1984); see also, Halfway Inc., 8 FMSHRC 8, 12 (1986) and Southern Oil Coal Co., 13 FMSHRC 912, 916-17 (1991).

According to Renney's Creek Mine Owner Calvin Hawks the oil observed by Inspector Scott was the result of a recent oil change and would be burned in their heater. Hawks testified that in fact welding was not performed in the presence of the used oil. Considering this undisputed testimony, I find that the potential ignition source from welding was not present in the shop area and accordingly there was no likelihood of an ignition from that source. There is similarly no evidence that cigarettes were smoked in the presence of these liquids. Under the circumstances I can not find that the violative condition was either a serious hazard nor "significant and substantial." Inasmuch as the operator was reportedly also about to pour the used motor oil into another container and did not have the oil present during welding I find reduced negligence.

Citation No. 3885037 alleges a violation of the standard at 30 C.F.R. 56.14206(b) and charges as follows:

The bucket on the Trojan, F.E.L. SNT 175581 was suspended in mid air, approx. 2 to 3 feet from the ground. The loader was unattended.

The cited standard provides as follows:

When mobile equipment is unattended or not in use, dippers, buckets and scrape blades shall be lowered to the ground. Other movable parts, such as booms, shall be mechanically secured or positioned to prevent movement which would create a hazard to persons.

It is undisputed that the bucket on the Trojan front-end loader was indeed some 2 to 3 feet off the ground, and the loader was unattended, with its motor running at the time it was cited. According to Inspector Scott the bucket could fall on someone resulting in the loss of a foot or leg. He concluded that the operator was negligent because he "should have known" that this was a violation.

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Calvin Hawks admitted that he left the bucket in an elevated position on this occasion but only because he was nervous by the presence of the inspector. He stated that it was his practice to always let the bucket down. Under the circumstances, and crediting Hawks testimony, I find that the violation was reasonably serious but that the operator is chargeable with only minor negligence.

Citation No. 3885038 charges a violation of the standard at 30 C.F.R. 506.12030 and alleges that "[t]he conduit was pulled from the junction box located at the No. 1 screen, allowing the single insulated wires to lay against the metal box."

The cited standard provides that "[w]hen a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized."

It is undisputed that the condition existed as cited. According to Inspector Scott, with the conduit pulled from the junction box and the single insulated wires rubbing against the metal box a shock hazard could eventually result. He considered the operator to be moderately negligent because the condition was readily visible. I accept the inspector's undisputed findings and conclude that a violation did occur as charged.

Citation No. 3885039 alleges that "[t]he motor junction box cover was not in place on the No. 1 screen motor." The cited standard, 30 C.F.R. 56.12032, provides that "[i]nspection and coverplates on electrical equipment and junction boxes shall be kept in place at all times except during testing or repairs."

It is not disputed that the conditions existed as charged and that the fact that the junction box cover was not in place was plainly visible from the ground area. It is undisputed that there was a shock and electrocution hazard if there were bare wires inside the box and if someone placed their hands inside the box. Inspector Scott found the violation not to be serious however because, in fact, the wires were protected inside the junction box. I accept the undisputed findings of the inspector and find that the violation occurred as charged.

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Citation No. 3884837 alleges a "significant and substantial" violation of the standard at 30 C.F.R. 56.4402 and alleges as follows:

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About 1/4 gallon of gasolene/oil mixture for 2 cycle engine (weed eater) was stored in a milk jug (plastic) immediately to the right of the large entrance door in the shop beside the outer wall on the floor. The gasolene [sic] was not in a safety can and was not labeled to indicate the contents.

The cited standard provides that "[s]mall quantities of flammable liquids drawn from storage shall be kept in safety cans labeled to indicate the contents."

The testimony of MSHA Inspector Ronald Lilly is undisputed that in the course of his inspection on September 2, 1992, there was a quarter gallon of gas/oil mixture for a 2 cycle weedeater stored in a plastic milk jug near the entrance door in the shop. It was neither stored in a safety can nor labeled to indicate its contents. Inspector Lilly opined that the violation was serious and "significant and substantial" because the plastic container in this case could easily have been punctured and was near electrical cables, including an extension cord and welding cables. In addition, according to Lilly, "when you put a spark to gasoline, especially when it's vaporized, you get an explosion and enormous fast-acting fire."

Calvin Hawks did not dispute that the gasoline/oil mix was kept in the plastic jug but maintained that the jug was less likely to spill gas when filling the weedeater than safety cans.

Within this framework I find that the violation was serious and "significant and substantial." See Mathies Coal Co., supra. The operator was also negligent in knowingly using the plastic container rather than a safety can.

Citation No. 3884838 alleges a violation of the standard at 30 C.F.R. 56.14132(a) and charges as follows:

The backup alarm on the 645-B Fiat-Allis front-end loader (altered to use shovel for cleaning conveyors at the plant) was defective and would not give an audible sound when the machine was placed in reverse. A signal person was not being utilized.

The cited standard provides that "[m]anually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety feature shall be maintained in functional condition."

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It is not disputed that the cited front-end loader did not in fact have its back-up alarm in a functioning condition at the time it was cited. According to Inspector Lilly someone behind the front-end loader could be struck due to the lack of visibility to the rear and the lack of an operative back-up alarm. He believed the hazard was "unlikely" however based on the limited area of operation and the absence of persons in the area. Lilly also concluded that the operator was negligent because it was obvious that the alarm did not function. I accept the undisputed findings of Inspector Lilly.

Citation No. 3884839 alleges a violation of the standard at 30 C.F.R. 14.1001(a) and charges that "[t]he 645-B Fiat-Allis front-end loader (altered to use as a shovel for cleaning conveyors in the plant) had not been inspected in regard to back-up alarm, before placing the machine in service."

The cited standard provides that "[s]elf-propelled mobile equipment to be used during a shift shall be inspected by the equipment operator before being placed in operation on that shift."

There is no dispute that the cited loader was in fact not inspected before being placed in operation on the shift at issue. According to Calvin Hawks, his son-in-law Andy Purifoy had not yet had an opportunity to inspect the loader when it was cited in this case. According to Purifoy it was indeed his responsibility to check the loader and he acknowledged that it was not inspected that day. I accept the undisputed findings in this case that the negligence was "moderate" and that injury was "unlikely" under the circumstances.

ORDER

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The citations in this case are hereby AFFIRMED and Renney's Creek Mine is directed to pay the following civil penalties for the violations charged in those citations within 30 days of the date of this decision:

Citation No. 3885035	\$ 75
Citation No. 3885036	\$ 75
Citation No. 3885037	\$ 50
Citation No. 3885038	\$100
Citation No. 3885039	\$ 75

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The citations in this case are AFFIRMED and Renney's Creek Mine is directed to pay the following civil penalties within 30 days of the date of this decision:

Citation No. 3884837	\$100
Citation No. 3884838	\$100
Citation No. 3884839	\$100

Gary Melick  
Administrative Law Judge  
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